

C. The Issuer shall remit from the Revenue Fund to the Commission, the Paying Agent or the Depository Bank, on such dates as the Commission, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any charges and fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund, the Series 2021 Bonds Construction Trust Fund and the Rebate Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. If on any monthly payment date the Net Revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

F. The Issuer shall on the first day of each month (if the first day is not a business day, then the next succeeding business day of each month), make the deposits with the Commission required by this Section 5.03 and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

G. The Gross Revenues of the System shall only be used for purposes of the System.

H. All Tap Fees shall be deposited by the Issuer, as received, in the Revenue Fund and may be used for any lawful purpose of the System.

## ARTICLE VI

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Advance and Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. The proceeds of the Series 2021 Bonds shall be advanced on the Closing Date by the Purchaser into the Series 2021 Bonds Construction Trust Fund. The proceeds of the Series 2021 Bonds shall be disbursed from time to time for the payment of costs of the Project, including without limitation, costs of issuing the Series 2021 Bonds upon receipt by the Purchaser from the Issuer of such requisitions and other documentation as the Purchaser may request and used by the Issuer for the payment of such costs of the Project, including without limitation, costs of issuing the Series 2021 Bonds. Until the proceeds of the Series 2021 Bonds are disbursed by the Issuer from the Series 2021 Bonds Construction Trust Fund to pay Costs of the Project, such proceeds are hereby pledged as additional security for the Series 2021 Bonds. In the event all of

the costs of the Project, including without limitation, costs of issuing the Series 2021 Bonds, have been paid in full and there remains a balance in the Series 2021 Bonds Construction Trust Fund, such balance shall be applied to the prepayment of a like portion of the Series 2021 Bonds upon receipt by the Purchaser of a certification by the Issuer that all of the costs of the Project, including without limitation, costs of issuing the Series 2021 Bonds, have been paid in full.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2021 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2021 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Series 2021 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2021 Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2021 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay said Series 2021 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds; Series 2012 Bonds, Series 2017 Bonds and Series 2021 Bonds to be Secured by Gross Revenues after Payment of Series 2003 Bonds. The payment of the debt service of all the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2021 Bonds and the Prior Bonds and to make the payments into all funds and accounts either existing or hereinafter established are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds and Prior Bonds as the same become due. In addition to the foregoing, the unexpended proceeds of the Series 2021 Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds as the same become due. Notwithstanding the foregoing, upon the payment in full of the Series 2003 Bonds, the payment of the debt service of all of the Series 2012 Bonds, the Series 2017 Bonds and the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System.

Section 7.04. Initial Schedule of Rates and Charges. Prior to the issuance of the Series 2021 Bonds, the Issuer shall establish a schedule of rates and charges that (i) meets the requirements of the Prior Bonds Ordinances to have the Series 2021 Bonds issued on a parity with the Prior Bonds, and (ii) meets the requirements of Section 7.09 hereof, and shall obtain any

and all approvals of such rates and charges required by State law and have taken any other action required to establish and impose such rates and charges with all requisite appeal periods having expired without successful appeal. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the Ordinance enacted by the Issuer on January 12, 2021, and are hereby ratified, and which rates are incorporated herein by reference as a part hereof.

So long as any of the Series 2021 Bonds are Outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation. In the event the schedule of rates and charges initially established for the System in connection with the Series 2021 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, the Issuer hereby covenants and agrees that it will, to the extent and in the manner authorized by law, promptly adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation.

Section 7.05. Sale of the System. So long as any of the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, or any part thereof, except as provided in the applicable Prior Ordinances. Additionally, so long as the Series 2021 Bonds are outstanding and except as otherwise required by law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Prior Bonds and Series 2021 Bonds that are Outstanding. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2003A Bonds Sinking Fund, the Series 2003B Bonds Sinking Fund, the Series 2012 Bonds Sinking Fund, the Series 2017 Bonds Sinking Fund and the Series 2021 Bonds Sinking Fund, respectively, pro rata, with respect to the principal amount of each of the Prior Bonds and the Series 2021 Bonds then Outstanding, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder of the Prior Bonds, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2021 Bonds and Prior Bonds in such manner. Any balance remaining after the payment of the Series 2021 Bonds and any other Bonds Outstanding and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$100,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Depreciation Account. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such

sales, leases or other dispositions of such properties, shall be in excess of \$100,000 but not in excess of \$500,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$100,000 and not in excess of \$500,000, shall with the written consent of the Holders of a majority of the outstanding principal of the Bonds be remitted by the Issuer to the Commission for deposit in the Sinking Funds, respectively, pro rata, with respect to the principal amount of each of the Bonds then Outstanding and shall be applied only to the purchase of the respective Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or to the redemption thereof to the extent such Bonds are then subject to redemption, or if such written consent of the Holders of a majority of the outstanding principal of the Bonds is not obtained, then the proceeds of any such sale shall be deposited in the Depreciation Account. Such payment of such proceeds into the Sinking Funds or the Depreciation Account shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$500,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in principal amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and in Section 7.07, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2021 Bonds. All obligations issued by the Issuer after the issuance of the Series 2021 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2021 Bonds.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2021 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2021 Bonds and the interest thereon, in this Resolution, or upon the System or any part thereof.

Section 7.07. Additional Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2021 Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.



All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2021 Bonds.

No such Parity Bonds shall be issued except for the purposes of financing the costs of the design, acquisition and/or construction of extensions, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds or Prior Bonds, or to pay claims which may exist against the revenues or facilities of the System or all or any combination of such purposes

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds, if any, and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired (without successful appeal) prior to the date of delivery of such additional Parity Bonds, whether or not such approved rates are being charged and collected by the Issuer.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer

shall comply fully with all the increased payments into the various funds and accounts created in this Resolution or other resolution required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the prior and superior liens of the Series 2021 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2021 Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions of this Bond Legislation for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the costs of acquiring the Project site, if any, and acquiring, constructing, equipping and installing the Project. The Issuer shall permit the Purchaser, or its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Purchaser such documents and information as the Purchaser may reasonably require in connection with the acquisition, construction, equipping and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Purchaser, or its agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Purchaser, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report within 30 days following the date of receipt by thereof by the Issuer containing the following:

- A. A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation with respect to said Bonds and the status of all said funds and accounts.
- C. The amount of any Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Accountants in compliance with the applicable OMB Circular and the Single Audit Act or successor thereto in effect at the time, to the extent required, and shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Purchaser or any other original purchaser of the Bonds.

Section 7.09. Rates. Prior to the issuance of the Series 2021 Bonds, equitable rates or charges for the use of and service rendered by the System shall be established that meet the requirements of this Section 7.03 all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect for each Fiscal Year beginning on and after July 1, 2021, shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any Fiscal Year for payment of principal of and interest on the Series 2021 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2021 Bonds, including the Prior Bonds.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Issuer, by a resolution duly adopted by the Governing Body, may from time to time amend the budget during the subject Fiscal Year provided that the budget remains balanced after such amendment. After the adoption of any such amendment, the budget, as amended, shall be the budget of the Issuer for the balance of the subject Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in the budget until the Issuer shall have approved such increased expenditures by a resolution duly adopted. The Issuer shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Purchaser and to any Bondholder or anyone acting for and in behalf of such Bondholder who shall file his or her address with the Issuer and request in writing that copies of all such budgets, any amendments thereto and resolutions be furnished him or her and shall make available such budgets, any amendments thereto and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate engineering services reasonably satisfactory to the Purchaser covering the supervision and inspection of the development and construction of the Project. The Issuer shall also employ qualified operating personnel properly certified by the State to operate the System so long as the Series 2021 Bonds are Outstanding.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the service of the System and



will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and the Issuer shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. The Issuer hereby covenants and agrees that so long as any of the Series 2021 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies will be placed in the Depreciation Account and shall be used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Account. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Purchaser, the prime contractor and all subcontractors as their respective interests may appear during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer, the Issuer and the Purchaser from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR: AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to

be performed prior to commencement of construction of the Project in compliance with West Virginia Code Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS, will be provided for every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 7.16. Completion and Operation of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2021 Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

Section 7.17. Compliance With Law. The Issuer shall perform, satisfy and comply with all terms and conditions of the Act and all other applicable laws, rules and regulations issued by State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.18. Contracts. The Issuer has or shall, simultaneously with the delivery of the Series 2021 Bonds or within thirty days thereafter, enter into written contracts for the acquisition, construction and equipping of the Project.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2021 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2021 Bonds during the term thereof is, under the terms of the Series 2021 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2021 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of

the interest due on the Series 2021 Bonds during the term thereof is, under the terms of the Series 2021 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5 % of Net Proceeds of the Series 2021 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 2021 Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2021 Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2021 Bonds to be directly or indirectly “federally guaranteed” within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2021 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Series 2021 Bonds will be and remain excludable from gross income for federal income tax purposes and will not take any actions which would adversely affect such exclusion.

## ARTICLE VIII

### INVESTMENT OF FUNDS

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys for the purposes set forth herein, and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or

then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year during which the respective banks hold any such funds, accounts or investments (or more often if reasonably requested by the Issuer), a summary of such funds, accounts, and investment earnings.

Section 8.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 2021 Bonds in such manner and to such extent as may be necessary, so that the Series 2021 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2021 Bonds) so that the interest on the Series 2021 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. A. The Issuer shall deliver a tax certificate or other similar document relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2021 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2021 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

B. Unless excepted therefrom, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall



pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect, with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefore. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and the required amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 2021 Bonds from gross income for federal income tax purposes.

C. In order to establish that the Series 2021 Bonds qualify for the exception from the arbitrage rebate requirements of Section 148(f) of the Code provided for in Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 2021 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds), including without limitation the Series 2021 Bonds, issued by the Issuer during the 2021 calendar year in which the Bonds are issued, does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect and applicable to the Series 2021 Bonds. For purposes of this paragraph and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2021 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any of the Series 2021 Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2021 Bonds, set forth in this Bond Legislation, any supplemental resolution or in the Series 2021 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Purchaser, the Commission, the Depository Bank or any other Paying Agent or other Holder of a Series 2021 Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to any of the Prior Bonds or any of the ordinances authorizing the issuance of the Prior Bonds.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Holders of the Bonds, including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Holders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of this Bond Legislation or the rights of such Bondholders; provided that all rights and remedies of the Holders of the Series 2021 Bonds shall be on a parity with the Holders of the Prior Bonds.

No remedy by the terms of this Resolution conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 9.03. Appointment of Receiver. Any Holder of a Bond, may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Holder of a Bond, shall, in addition to all

other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other avenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Holder of any Bonds, shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Holders of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds, and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

Section 9.04. Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Resolution by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such

Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Series 2021 Bonds. If the Issuer shall pay or there shall otherwise be paid, to the respective Holders of all Series 2021 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2021 Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Holders of the Series 2021 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the issuance of the Series 2021 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2021 Bonds, no material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of the Holders of the Series 2021 Bonds shall be made without the consent in writing of the Holders of a majority of the principal of the Series 2021 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Series 2021 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Holder thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Holders of the Series 2021 Bonds and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Bond Legislation should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, any Supplemental Resolution, or the Series 2021 Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only and shall not affect in any way the meaning or interpretation of any provision hereof.



Section 11.05. Conflicting Provisions Repealed. All orders, ordinances, or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that in the event of any conflict between this Ordinance and any of the Prior Ordinances then in effect, the Prior Ordinance then in effect shall control (unless less restrictive), so long as the respective Prior Bonds or any portion thereof are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Upon enactment hereof, an abstract of this Ordinance, substantially in the form attached hereto as Exhibit B, which is determined by the Issuer to contain sufficient information as to give notice of the contents hereof, shall be published once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in a qualified newspaper published and of general circulation in the Corporation of Shepherdstown, together with the notice set forth therein stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2021 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Town Clerk for review by interested parties during the office hours of the Town Clerk.

At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect following the public hearing described in Section 11.07 above.

Passed on First Reading \_\_\_\_\_, 2021

Passed on Second Reading \_\_\_\_\_, 2021

Passed on Final Reading and  
Effective following public  
hearing held on \_\_\_\_\_, 2021

\_\_\_\_\_  
Mayor

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Recorder

**EXHIBIT A**

**DESCRIPTION OF PROJECT**

Design, acquisition, construction and equipping of additions, betterments and improvements to the waterworks system of the Corporation of Shepherdstown including without limitation the renovation and improvement of the water treatment plant and related facilities.

**EXHIBIT B**

**NOTICE OF PUBLIC HEARING**

**CORPORATION OF SHEPHERDSTOWN  
NOTICE OF PUBLIC HEARING  
ON WATER BOND ORDINANCE**

A public hearing will be held on the following entitled Ordinance at a [regular/special]meeting of the Council of the Corporation of Shepherdstown to be held on \_\_\_\_\_, \_\_\_\_\_, 2021, at [\_\_\_\_\_ p.m.], in the Council Chambers at the Shepherdstown Town Hall, 104 North King Street, Shepherdstown, West Virginia, and at such hearing any person interested may appear before the Council and present protests, all objections and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM OF THE CORPORATION OF SHEPHERDSTOWN, INCLUDING CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER TREATMENT PLANT, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CORPORATION OF SHEPHERDSTOWN OF WATER REVENUE BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000.00); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2021 BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITIES FOR THE HOLDERS OF THE SERIES 2021 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

The above-entitled Ordinance was enacted by the Council of the Corporation of Shepherdstown on \_\_\_\_\_, 2021.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bond issue contemplated thereby. The Corporation of Shepherdstown contemplates the issuance of the Bonds described in said Ordinance. The proceeds of the Bonds will be used to provide permanent financing the costs of the design, acquisition, construction and equipping of certain additions, betterments and improvements to the waterworks system for the



Corporation of Shepherdstown including, the renovation and improvement of the water treatment plant and related facilities. The Bonds are payable solely from revenues derived from the ownership and operation of the waterworks system of the Corporation of Shepherdstown. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the Town Clerk of the Corporation of Shepherdstown in the Shepherdstown Town Hall, 104 North King Street, Shepherdstown, West Virginia, for review by interested parties during regular office hours.

Following the said public hearing, the Council intends to enact said Ordinance on final reading and put said Ordinance into effect.

Dated: \_\_\_\_\_, 2021.

/s/Lori Robertson, Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CORPORATION OF SHEPHERDSTOWN on the \_\_\_\_ day of \_\_\_\_\_, 2021, and passed on third and final reading and put into effect following a public hearing held on \_\_\_\_\_, 2021.

Dated: \_\_\_\_\_, 2021.

\_\_\_\_\_  
Recorder

[SEAL]



July 28, 2021

Arthur J. Auxer, III Mayor  
Corporation of Shepherdstown  
PO Box 248  
Shepherdstown, WV 25443

Revised Loan Commitment

Greetings,

It is a pleasure to inform you that your commercial loan application submitted to Jefferson Security Bank has been approved. Subject to the terms and conditions listed below, this commitment letter once signed will be binding between you and the bank as it pertains to the loan transaction described and will be valid through and including September 30, 2021. Once signed, you will be liable for any resulting settlement expenses or other efforts undertaken by the bank or its parties to close this transaction after such acknowledgement.

This commitment letter is our mutual agreement of the general terms relating to your borrowing. In the event that these terms are not further amended in writing or qualified by a more specific loan agreement at settlement, it shall otherwise survive settlement so as to memorialize the terms and conditions agreed to by both you and Jefferson Security Bank. Review these terms carefully, and contact the bank as soon as possible should they not conform to our prior discussion or understandings. Please note that although the following is a summary of the transaction, you may be asked to produce additional documentation prior to closing should it be required regarding issues of title, appraisal or changes in financial position which are revealed after this date.

Borrower(s):	Corporation of Shepherdstown (the "Corporation")
Amount of Loan:	\$1,250,000.00
Term / Amortization:	180 month amortization
Initial Rate / Index:	The rate will be fixed at 2.35% if closed by September 30, 2021. After such date, if this commitment is extended by the Bank, the rate will be based off 10 year US Treasury Average based upon a Constant Maturity of 10 year Index plus a margin of 0.85%. Interest will accrue under a 360/365 interest basis.
Bank Fees and Charges:	Origination Fee: \$ 2,500.00
	<hr/>
	Total Bank Collected Fees: \$ 2,500.00
Collateral:	A lien on the net revenues of the Corporation's water system, on parity with the Corporation's outstanding Water Revenue Bonds, which lien on the net revenues of the Corporation's

water system shall be created by a Bond Ordinance to be enacted by the Town Council of the Corporation.

The Bank's obligation to make the Loan shall be subject to receipt by the Bank of properly executed documents in form and substance satisfactory to the Bank and/or the Bank's counsel, including but not limited to:

- The borrowing is for the purpose of financing a portion of the costs of its 2021 Water Plant Upgrade Project and the associated costs of issuing Water Revenue Bonds.
- **This letter replaces and amends the terms of a prior commitment letter dated July 21, 2021.**
- A complete copy of the Water Revenue Bond and related Bond Ordinance is required prior to settlement.
- This commitment is contingent upon receipt by the bank of a Bank Qualified Tax Exempt Letter from the Corporation's Bond Counsel confirming the tax exempt status of the Water Revenue Bond to be issued by the Corporation to Jefferson Security Bank.
- It is the understanding of the parties that the funds of the issuance will be advance fully at settlement and that construction funds net of actual settlement costs will be deposited in an interest-bearing Jefferson Security Bank deposit account established for construction funds.
- Payments on the Water Revenue Bond will commence on a date reasonably acceptable to the Bank, it being understood that the payments will be made monthly on the first business day of each month, the first payment being approximately 30 to 45 days from the date of settlement.
- Advances from that construction account will be made by the Bank to Corporation of Shepherdstown as certified completion certificates are delivered to the Bank under the attestation of the Corporation's Professional Civil Engineer responsible for the project. Certificates shall clearly identify the portion of Corporation funds from other sources and the amount of Bond funds to be disbursed from the construction account at each drawing.
- Should settlement of the transaction not occur by September 30, 2021, and the Bank extends this commitment, the Bank will adjust the rate of the borrowing to an index published by the Federal Reserve Board based on the average yield of a range of Treasury securities, all adjusted to the equivalent of a 10-year maturity plus a margin of 85 basis points. (Yields on Treasury securities at constant maturity are determined by the U.S. Treasury from the daily yield curve. That is based on the closing market-bid yields on actively traded Treasury securities in the over-the-counter market. The index of 10 year constant maturity rates may be found at [FRB H15: Data Download Program - Choose \(federalreserve.gov\)](https://www.federalreserve.gov/data/frb-h15-data-download-program-choose)).

Under this borrowing, the Corporation agree) to provide periodic financial information to the Bank as requested within 30 days of any such request made by the Bank. Notwithstanding periodic updates of such information, the Corporation will provide annual financial statements within 120 days of the end of each fiscal year.

- **The Corporation will be responsible for the costs of legal and settlement fees if any such costs are applicable to the transaction prior to and during the course of the borrowing.**

The Bank may at its option, at any time, terminate the commitment if any of the following events shall occur:

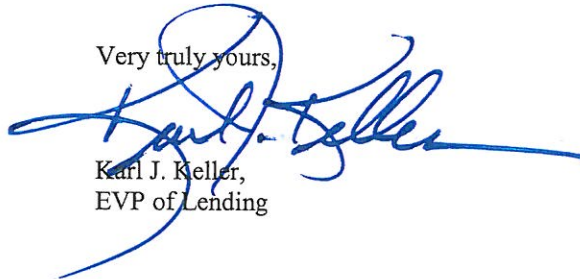


- If any of the terms and conditions of the commitment cannot be complied with.
- If any material adverse change occurs in the financial condition of the Corporation prior to the closing.
- If the Corporation should apply for or consent to the appointment of a receiver, trustee, or liquidator for any of its property; make a general assignment for the benefit of creditors; be adjudged bankrupt or insolvent; have any assets placed into receivership; admit in writing an inability to pay its debts as they mature, then this commitment shall terminate and if any outstanding principal balances and accrued interest exist on the loan or with respect to any indebtedness of the Corporation, the same shall become due and payable on demand.

This commitment letter does not contain all of the terms and provisions, which may be included in the final loan documents.

If these terms and conditions are acceptable to you, please indicate your acceptance by returning a signed copy of this letter to the Bank.

Very truly yours,



Karl J. Keller,  
EVP of Lending

Agreed to and accepted this \_\_\_\_\_ Day of \_\_\_\_\_, 2021:

**AN ORDINANCE TO AMEND CHAPTER 1 OF TITLE 7 OF THE CODE OF  
SHEPHERDSTOWN, WEST VIRGINIA, SECTION 7-111 RELATING TO MALICIOUS  
MISCHIEF**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 1, Title 7 of the Code of Shepherdstown is hereby amended by revising Section 7-111, relating to malicious mischief, to conform with the penalties and standards set forth in W. Va. Code § 61-3-29 and W. Va. Code § 61-3-30. Accordingly, Chapter 1, Title 7 of the Code of Shepherdstown is amended and revised as follows:

**Section 7-111. Malicious mischief.**

(a) It shall be unlawful for any person to take and carry away, or destroy, injure or deface any property, real or personal, not his own is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than thirty days, or both.

(b) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$2,000, or confined in jail more than thirty days, or both.

(c) If any person breaks down, destroys, injures, defaces or removes any monument erected for the purpose of designating the boundaries of this town, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty dollars nor more than two hundred dollars, or confined in the county or regional jail not more than thirty days.

Authority: W. Va. Code § 61-3-29; W. Va. Code § 61-3-30

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

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Mayor

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Recorder

**AN ORDINANCE AMENDING AND REENACTING  
CHAPTER 2 OF TITLE 7 OF THE CODE OF SHEPHERDSTOWN, WEST VIRGINIA,  
AND SECTION 7-201: "PROHIBITED ACTS A; PENALTIES", SECTION 7-202:  
"PROHIBITED ACTS B; PENALTIES", SECTION 7-203: "PENALTIES UNDER  
OTHER LAWS", SECTION 7-204: "BAR TO PROSECUTION", SECTION 7-205:  
"CONDITIONAL DISCHARGE FOR FIRST OFFENSE OF POSSESSION", SECTION  
7-206: "SECOND OR SUBSEQUENT OFFENSES", SECTION 7-207: "PROHIBITED  
ACTS – TRANSPORTATION OF CONTROLLED SUBSTANCES INTO  
MUNICIPALITY; PENALTIES", AND SECTION 7-208: "PROHIBITED ACTS –  
WITHHOLDING INFORMATION FROM PRACTITIONER; ADDITIONAL  
CONTROLLED SUBSTANCES; PENALTIES," RELATING TO CRIMINAL  
OFFENSES INVOLVING CONTROLLED SUBSTANCES**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 2 of Title 7 of the Shepherdstown Code containing Section 7-201 "Prohibited Acts A; Penalties", Section 7-202 "Prohibited Acts B; Penalties", Section 7-203 "Penalties Under Other Laws", Section 7-204 "Bar to Prosecution", Section 7-205 "Conditional Discharge for First Offense of Possession", Section 7-206 "Second or Subsequent Offenses", Section 7-207 "Prohibited Acts – Transportation of Controlled Substances into Municipality", and Section 7-208 "Prohibited Acts – Withholding Information From the Practitioner; Additional Controlled Substances; Penalties", relating to criminal offenses involving controlled substances, is hereby revised and reenacted; accordingly Chapter 2 of Title 7 containing Sections 7-201, 7-202, 7-203, 7-204, 7-205, 7-206, 7-207, and 7-208 read as follows:

**Section 7-201: Prohibited acts A; penalties.**

- (a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance. A controlled substance is classified in Schedule V (defined in West Virginia Code§ 60A-2-212) is guilty of a misdemeanor and, upon conviction, may be confined in jail for not more than thirty days, or fined not more than five thousand dollars, or both.
- (b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this subsection with respect to a counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not more than thirty days, or fined not more than five thousand dollars, or both.
- (c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under Section 7-205 of this chapter, subject to the limitations specified in said section, or upon conviction, such person may be confined to jail not more than



thirty days, or fined not more than one thousand dollars, or both: Provided, That notwithstanding any other provision of this chapter to the contrary, any first offense for possession of less than 15 grams of marijuana shall be disposed of under said section.

(d) It is unlawful for any person knowingly or intentionally:

- (1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
- (2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.
- (3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be imprisoned in jail for not more than thirty days, or fined not more than five thousand dollars, or both.
- (4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

#### **Section 7-202. Prohibited acts B; penalties.**

(a) It is unlawful for any person;

- (1) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
  - (2) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter;
  - (3) To refuse any entry into any premises for any inspection authorized by this chapter; or
  - (4) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.
- (b) Any person who violates this section is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than thirty days, or fined not more than twenty-five thousand dollars, or both.
- (c) Notwithstanding any other provision of this chapter to the contrary, any first offense for distributing less than 15 grams of marihuana without any remuneration shall be disposed of under Section 7-205.

**Section 7-203. Penalties under other laws.**

Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

**Section 7-204. Bar to prosecution.**

If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this municipality.

**Section 7-205. Conditional discharge for first offense of possession.**

- (a) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or controlled substance under Section 7-201(c) of this chapter, the court, without entering a judgment of guilty and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under Section 7-206 of this chapter. The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected, shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only one discharge and dismissal under this section with respect to any person.
- (b) After a period of not less than six months which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this chapter, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this section has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.
- (c) Notwithstanding any provision of this chapter to the contrary, any person prosecuted pursuant to the provisions of this chapter whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of Section 7-201(c) of this chapter. Payment of such costs may be made a condition of probation.

**Section 7-206. Second or subsequent offenses.**

- (a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term of up to thirty days, fined an amount up to twice that otherwise authorized, or both.
- (b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States, the State of West Virginia, or of any state relating to narcotic drugs, marihuana, depressants, stimulant, or hallucinogenic drugs.
- (c) This section does not apply to offenses under Section 7-201(c).

**Section 7-207. Prohibited acts – Transportation of controlled substances into municipality; penalties.**

- (a) Except as otherwise authorized by the provisions of this chapter, it shall be unlawful for any person to transport into this municipality a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.
- (b) Any person who violates this section with respect to a substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not more than thirty days, or fined not more than five thousand dollars, or both.
- (c) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this chapter.

**Section 7-208. Prohibited acts – Withholding information from practitioner; additional controlled substances; penalties.**

- (a) It is unlawful for a patient, in an attempt to obtain a prescription for a controlled substance, to knowingly withhold information from a practitioner that the patient has obtained a prescription for a controlled substance of a similar therapeutic use in a concurrent time period from another practitioner.
- (b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in the county jail or regional jail for not more than thirty days, or fined not more than twenty-five hundred dollars, or both fined and imprisoned.
- (c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set forth in this chapter.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder

12968021.1



**AN ORDINANCE TO AMEND CHAPTER 4 OF TITLE 7 OF THE CODE OF  
SHEPHERDSTOWN, WEST VIRGINIA, SECTION 7-402: "TRESPASS IN  
STRUCTURE AND CONVEYANCE", SECTION 7-403: "TRESPASS ON PROPERTY  
OTHER THAN STRUCTURE OR CONVEYANCE", AND SECTION 7-405:  
"TRESPASS ON STATE GOVERNMENT PROPERTY; AIDING AND ABETTING;  
PENALTIES", RELATING TO CRIMINAL OFFENSES FOR TRESPASS**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 4, Title 7 of the Code of Shepherdstown is hereby amended by revising Section 7-402; Section 7-403; and Section 7-405 to comply with the standards set forth in W. Va. Code § 8-11-1. Accordingly, Chapter 4, Title 7 of the Code of Shepherdstown is amended and revised as follows:

**Section 7-402. Trespass in structure or conveyance.** (a) Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned in this Town as unfit for human habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or confined in jail not more than thirty days, or both fined and confined: *Provided*, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.

(c) If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in said structure or conveyance at the time the offender knowingly trespasses, such offender shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or be confined in the county or regional jail for a period of time not to exceed thirty days, or both.

**Section 7-403. Trespass on property other than structure or conveyance.**

(a) Any person who knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for not less than \$100 nor more than \$500 for a first offense. Upon a second trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a

misdemeanor and shall be fined not less than \$500 nor more than \$1,000. Upon a third and subsequent trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$1,000 nor more than \$1,500.

- (b) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county or regional jail for a period not to exceed thirty days, or both.
- (c) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county or regional jail for a term not to exceed thirty days, or fined not more than one hundred dollars, or both.
- (d) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage: Provided, That the provisions of this chapter shall not apply in a labor dispute.

**Section 7-405. Trespass on state government property; aiding and abetting; penalties.**

- (a) Notwithstanding any provisions of this code to the contrary, any person who knowingly and willfully violates an administrative order of a court, a rule or emergency rule promulgated by the Secretary of Administration, a joint rule of the Senate and House of Delegates or a rule of the Senate or House of Delegates relating to access to government buildings or facilities or portions thereof under their control or who knowingly and willfully aids or abets another to violate such an order, rule or joint rule is guilty of a misdemeanor and, upon conviction, shall be confined for not more than thirty days or fined not more than five hundred dollars, or both.
- (b) Any person who violates the provisions of subsection (a) of this section with the intent to commit a crime which constitutes a misdemeanor is guilty of a misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than thirty days or fined not more than one thousand dollars, or both.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder

**AN ORDINANCE TO ADOPT  
CHAPTER 6, TITLE 7 OF THE CODE OF SHEPHERDSTOWN IN ACCORDANCE  
WITH THE CODE OF THE STATE OF WEST VIRGINIA.**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 6 of Title 7 of the Shepherdstown Code is hereby created and adopted by adding Section 7-602 entitled "*Shoplifting defined*," Section 7-603 entitled "*Evidence*," Section 7-604 entitled "*Penalties*," and Section 7-605 entitled "*Definitions*." These ordinances make it an offense to shoplift, and establish penalties and guidelines for such violations. Said ordinances are expressly authorized by W. Va. Code § 61-3A-1; § 61-3A-2; § 61-3A-3; § 61-3A-6. Accordingly, Section 7-602, 7-603, 7-604, and 7-605 of Chapter 6 of Title 7 is to read as follows:

**7-602. Shoplifting defined.**

(a) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:

- (1) Conceals the merchandise upon his or her person or in another manner; or
- (2) Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or
- (3) Alters, transfers or removes any price marking affixed to the merchandise; or
- (4) Transfers the merchandise from one container to another; or
- (5) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
- (6) Removes a shopping cart from the premises of the mercantile establishment; or
- (7) Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.

(b) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.



### **7-603. Evidence.**

(a) Evidence of stated price or ownership of merchandise may include, but is not limited to:

- (1) The actual merchandise alleged to have been shoplifted; or
- (2) The unaltered content of the price tag or marking from such merchandise; or
- (3) Properly identified photographs of such merchandise.

(b) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.

### **7-604. Penalties.**

A person convicted of shoplifting shall be punished as follows:

(a) First offense conviction. -- Upon a first shoplifting conviction:

- (1) When the value of the merchandise is less than or equal to five hundred dollars, the person is guilty of a misdemeanor and shall be fined not more than two hundred fifty dollars.
- (2) When the value of the merchandise exceeds five hundred dollars, the person is guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars, or the person shall be confined in jail not more than thirty days, or both.

(b) Second offense conviction. -- Upon a second shoplifting conviction:

- (1) When the value of the merchandise is less than or equal to five hundred dollars, the person is guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars, or the person shall be confined in jail not more than thirty days, or both.
- (2) When the value of the merchandise exceeds five hundred dollars, the person is guilty of a misdemeanor and shall be fined not less than five hundred dollars or shall be confined in jail for not more than thirty days, or both.

(d) Mandatory penalty. -- In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.

(e) In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.

**7-605. Definitions.**

- (a) "Card-not-present credit or debit transaction" means a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not require the cardholder's signature or physical presentation of the credit or debit card to the merchant.
- (b) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.
- (c) "Merchant" means an owner or operator of any mercantile establishment and includes the merchant's employees, servants, security agents or other agents.
- (d) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not include adjoining parking lots or adjoining areas of common use with other establishments.
- (e) "Merchandise" means any goods, foodstuffs, wares or personal property, or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.
- (f) "Value of the merchandise" means the merchant's stated price of the merchandise, or, in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in section one of this article, the difference between the merchant's stated price of the merchandise and the altered price.

References: W. Va. Code § 61-3A-1; § 61-3A-2; § 61-3A-3; § 61-3A-4; § 61-3A-6.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder

**AN ORDINANCE TO AMEND CHAPTER 3 OF TITLE 10 OF THE CODE OF  
SHEPHERDSTOWN, WEST VIRGINIA, SECTION 10-310, RELATING TO  
OBSTRUCTING, FLEEING FROM OR MAKING FALSE STATEMENTS TO A  
POLICE OFFICER**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 3, Title 10 of the Code of Shepherdstown is hereby amended by revising Section 10-310, relating to obstructing, fleeing from or making false statements to a police officer, to conform with the penalties and standards set forth in W. Va. Code § 61-5-17. Accordingly, Chapter 3, Title 10 of the Code of Shepherdstown is amended and revised as follows:

**Section 10-310. Obstructing officer; fleeing from officer; making false statement to officer; penalties; definitions.**

(a) Any person who by threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct a police officer, acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars or confined in the county or regional jail not more than thirty days, or both.

(b) Any person who, with intent to impede or obstruct a police officer in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars and not more than two hundred dollars, or confined in the county or regional jail for five days, or both: Provided, That the provisions of this section shall not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, "police officer" is defined in accordance with Section 10-309(e) of this code.

(c) Any person who intentionally flees or attempts to flee by any means other than the use of a vehicle from any police officer, acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars or confined in the county or regional jail not more than thirty days, or both.

(d) Any person who intentionally flees or attempts to flee in a vehicle from any police officer, acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, is guilty of a misdemeanor and, upon conviction thereof, shall be fined

not less than five hundred nor more than one thousand dollars, or shall be confined in the county or regional jail for not more than thirty days, or both.

(e) Any person who intentionally flees or attempts to flee in a vehicle from any police officer, acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of any person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than three thousand dollars, or shall be confined in the county or regional jail for not more than thirty days, or both.

(f) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in section one [§ 17A-1-1], article one, chapter seventeen-a of the West Virginia Code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(g) For purposes of this section, the terms "flee," "fleeing" and "flight" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing police officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

Authority: W. Va. Code Ann. § 61-5-17

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

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Mayor

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Recorder

**AN ORDINANCE TO AMEND  
SECTION 12C-502 OF CHAPTER 5, TITLE 12C OF THE CODE OF  
SHEPHERDSTOWN PERTAINING TO DRIVING UNDER THE INFLUENCE OF  
ALCOHOL, CONTROLLED SUBSTANCES, OR DRUGS, AND TO ADD SECTION  
12C-502b TO CHAPTER 5, TITLE 12C OF THE CODE OF SHEPHERDSTOWN TO  
ESTABLISH STANDARDS FOR PARTICIPATION IN THE MOTOR VEHICLE  
ALCOHOL TEST AND LOCK PROGRAM**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 5, Title 12C of the Code of Shepherdstown is hereby amended by revising Section 12C-502 to comply with the updated standards and penalties set forth in W. Va. Code § 17C-5-2. Additionally, Chapter 5, Title 12C of the Code of Shepherdstown is hereby amended by adding Section 12C-502b to establish standards for participation in the motor vehicle alcohol test and lock program set forth in W. Va. Code § 17C-5-2b. Accordingly, Chapter 5, Title 12C of the Code of Shepherdstown is amended and revised as follows:

**Section 12C-502. Driving under influence of alcohol, controlled substances or drugs; penalties.**

(a) Definitions.

- (1) "Impaired state" means a person:
  - A. Is under the influence of alcohol;
  - B. Is under the influence of any controlled substance;
  - C. Is under the influence of any other drug;
  - D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
  - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.
- (2) "Bodily injury" means injury that causes substantial physical pain, illness or any impairment of physical condition.
- (3) "Controlled substance" has the meaning provided in § 60A-1-101 of the West Virginia Code.



- (4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.
- (b) Any person who drives a vehicle in this Town while he or she is in an impaired state, and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code. Any jail term imposed pursuant to this subsection shall include actual confinement of not less than 24 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense. Any person who drives a vehicle on any public highway or private road in this Town while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (c) Any person who drives a vehicle on any public highway or private road in this Town: (1) while he or she is in an impaired state; or (2) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code: *Provided*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (d) Any person who drives a vehicle on any public highway or private road in this Town while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by

the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

- (e) Any person who, being a habitual user of narcotic drugs or amphetamines, or any derivative thereof, drives a vehicle on any public highway or private road in this Town is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (f) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this Town by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code.
- (g) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this Town by any other person who is a habitual user of narcotic drugs or amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months.
- (h) Any person under the age of 21 years who drives a vehicle on any public highway or private road in this Town while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of 60 days or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the test and lock program as provided in § 17C-

5A-3a of the West Virginia Code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

Notwithstanding subsection (h), a person shall have his or her license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code, if the person: (1) Has previously been convicted under this subsection and is subsequently convicted of an offense under another subsection of this section; or

- (2) Is convicted under this subsection and has previously been convicted of an offense under another subsection of this section.

Nothing in this subsection permits a shorter period of license revocation, license suspension, or participation in the test and lock program than is mandatory for the specific offense for which the person is convicted.

A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), or (g), of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

- (i) Any person who drives a vehicle on any public highway or private road in this Town while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code: *Provided*, That such jail term shall include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (j) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year, may be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period of time conditioned on participation in the test and lock program in accordance with § 17C-5A-3a of the West Virginia Code: *Provided*, That if the second conviction is for an offense as described in subsection (b) of this section and the subsection creating the offense requires a period of incarceration, period of license

revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, or fine shall be imposed: *Provided, however,* That this section does not apply to a second conviction that is subject to a period of license revocation under subsection (h) of this section.

(k) For purposes of subsection (j) of this section relating to second offenses, the following events shall be regarded as offenses under this section:

- (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f) or (g) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;
- (2) Any conviction under a municipal ordinance of this State or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding; and
- (3) Any period of conditional probation imposed pursuant to West Virginia Code 17C-5-2(b) for violation of subsection (c) of this section, which violation occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(l) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to West Virginia Code 17C- 5-2(b).

(m) The fact that any person charged with a violation of subsection (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f) or (g) of this section.

(n) A person whose license to operate a motor vehicle has been revoked or suspended by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment program as set forth in § 17C-5A-3 of the West Virginia Code before his or her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.



- (o) For any offense for which an alternative revocation period is permitted conditioned upon participation in the test and lock program, an alternative sentence may not be imposed without the consent of the driver.
- (p) Upon entering the order of conviction for an offense under this section, or the imposition of conditional probation as provided in § 17C-5-2b of the West Virginia Code, the clerk of the court shall immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

**Section 12C-502b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.**

- (a) Except as provided in section (g) of this article, whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to driving under the influence alcohol, any controlled substance or any other drug:
  - (1) Notifies the court within thirty days of his or her arrest of his or her intention to participate in a deferral pursuant to this section; and
  - (2) Pleads guilty to or is found guilty of driving under the influence of alcohol under subsection (c) of section 12C-502 , the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and, notwithstanding any provisions of this ordinance to the contrary, place him or her on probation, which conditions shall include that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in 17C-5A-3a of the West Virginia Code. Participation therein shall be for a period of at least one hundred and sixty-five days after he or she has served the fifteen days of license suspension imposed pursuant to 17C-5A-2 of the West Virginia Code.
- (b) A defendant's election to participate in deferral under this section shall constitute a waiver of his or her right to an administrative hearing as provided in 17C-5A-2 of the West Virginia Code.
- (c) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to section (d) of this article, the court may issue such process as is necessary to bring the defendant before the court.
  - (1) A motion alleging such violation filed pursuant to subsection (c)(1) must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.



- (2) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.
  - (3) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes or rules of court during the period of enrollment in the program.
- (d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within thirty days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the thirty-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in section (c) hereof.
- (e) Except as provided herein, unless a defendant adjudicated pursuant to this section be convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in Article 5a of Chapter 17C of the West Virginia Code . Except as provided in subsections (j), (k) and (l), of Section 12C-502 pertaining to subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (k) of Section 12C-502.
- (f) There may be only one discharge and dismissal under this section with respect to any person.
- (g) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of Section 12C-502 or West Virginia Code 17C-5 has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicle(s); (3) if the person has previously had his or her driver's license revoked under article Chapter 17C, Article 5 of the West Virginia Code or

under any statute of the United States or of any state relating to driving under the influence alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary chemical test pursuant to section seven of Chapter 17C, Article 5 of the West Virginia Code.

- (h) Notwithstanding any provision of this ordinance to the contrary, any person prosecuted for a violation of Section 12C-502 whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of this ordinance. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with relevant municipal ordinances and state statutes.

Authority: W. Va. Code § 17C-5-2; W. Va. Code § 17C-5-2b; W. Va. Code § 17C-5-11.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder

**AN ORDINANCE TO AMEND  
SECTION 12C-503 OF CHAPTER 5, TITLE 12C OF THE CODE OF  
SHEPHERDSTOWN PERTAINING TO RECKLESS DRIVING**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 5, Title 12C of the Code of Shepherdstown is hereby amended by revising Section 12C-503 to conform with the requirements of West Virginia Code § 17C-5-3,

**Section 12C-503. Reckless driving; penalties.**

- (a) Any person who drives any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private, or upon the ways of any state institution, or upon the property of any county boards of education, or upon any property within the state park and public recreation system established by the Director of the Division of Natural Resources pursuant to section three, article four, chapter twenty of the West Virginia Code, in this Town, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.
- (b) The provisions of subsection (a) of this section shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the director of the department of natural resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.
- (c) Every person convicted of reckless driving in this Town is guilty of a misdemeanor, and upon a first conviction thereof, shall be confined in jail for a period of not less than five days nor more than ninety days, or fined not less than twenty-five dollars nor more than five hundred dollars, or both, and upon conviction of a second or subsequent conviction thereof, shall be confined in jail not less than ten days nor more than six months, or fined not less than fifty dollars nor more than one thousand dollars, or both.
- (d) Notwithstanding the provisions of subsection (c) of this section, any person convicted of a violation of subsection (a) of this section who in doing so proximately causes another to suffer serious bodily injury in this Town shall, upon conviction, be confined in jail not less than ten days nor more than six months or fined not less than fifty dollars nor more than one thousand dollars, or both.
- (e) For purposes of subsection (d) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

Authority: W.Va. Code § 17C-5-3; W.Va. Code § 17C-5-11

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_

Mayor

\_\_\_\_\_

Recorder