



The City of Morgantown

430 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439
www.morgantownwv.gov

AMENDED AGENDA

MORGANTOWN CITY COUNCIL REGULAR MEETING

Mon County Commission Chambers, 243 High Street, 2nd Floor, Morgantown, WV 26505

Tuesday, December 06, 2022 at 7:00 PM

1. **CALL TO ORDER:**
2. **ROLL CALL:**
3. **PLEDGE:**
4. **APPROVAL OF MINUTES:**
 - A.** November 15, 2022, Special Meeting Minutes
 - B.** November 15, 2022, Regular Meeting Minutes
 - C.** November 29, 2022, Special Meeting Minutes
 - D.** November 29, 2022, Committee of the Whole Meeting Minutes
5. **CORRESPONDENCE:**
 - A.** Introduction of Drew Bailey - Communications Director
 - B.** Police Officers Video Oath of Office
 - C.** Recognition of Human Rights Commission
6. **PUBLIC HEARINGS:**
 - A.** **An Ordinance Authorizing Bill of Sale, Lease, Promissory Note and Security Agreement for First Responder Training Center**
7. **UNFINISHED BUSINESS:**
 - A.** Consideration of **APPROVAL** of (Second Reading) of **An Ordinance Authorizing Bill of Sale, Lease, Promissory Note and Security Agreement for First Responder Training Center** (*First reading 10/18/2022*)
 - B.** Boards & Commissions

8. PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION:

9. SPECIAL COMMITTEE REPORTS:

10. CONSENT AGENDA:

11. NEW BUSINESS:

A. Consideration of ADOPTION of Findings & Conclusions of the Vacant Structure: 400 Beechurst Avenue, Morgantown, WV 26505.

B. Consideration of APPROVAL of Findings & Conclusions of the Vacant Structure: 301 East Brockway Avenue, Morgantown, WV 26505.

C. Consideration of APPROVAL of Findings & Conclusions of the Vacant Structure: 2100 Listravia Avenue, Morgantown, WV 26505.

D. Consideration of APPROVAL of A Resolution of the City of Morgantown to Achieve Greenhouse Gas Reduction in Support of the Paris Climate Agreement

E. Consideration of APPROVAL of A Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2010 C (WV SRF Program) (the “Series 2010 C Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the funding of the Series 2010 C Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the approximate amount of \$934,937.00; (iii) authorize the withdrawal of monies in the Series 2010 C Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve Agreement from Build America Mutual Assurance Company for the Series 2010 C Bonds Reserve Account and related matters

F. Consideration of APPROVAL of A Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2010 D (WV DWTRF Program) (the “Series 2010 D Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the funding of the Series 2010 D Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the approx. amount of \$566,383.00; (iii) authorize the withdrawal of monies in the Series 2010 C Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve Agreement from Build America Mutual Assurance Company for the Series 2010 D Bonds Reserve Account

G. Consideration of APPROVAL of A Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2012 A (WV DWTRF Program) (the “Series 2012 A Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the funding of the Series 2012 A Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the approx. amount of \$20,473.00; (iii) authorize the withdrawal of monies in the Series 2012 A Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve

Agreement from Build America Mutual Assurance Company for the Series 2012 A Bonds Reserve Account

- H.** Consideration of **APPROVAL** of **A Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2013 A (WV Infrastructure Fund)** (the “Series 2013 A Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the funding of the Series 2013 A Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the approx. amount of \$131,580.00; (iii) authorize the withdrawal of monies in the Series 2013 A Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve Agreement from Build America Mutual Assurance Company for the Series 2013 A Bonds Reserve Account
- I.** Consideration of **APPROVAL** of **Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2015 A (WV Water Development Authority)** (the “Series 2015 A Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the funding of the Series 2015 A Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the approx. amount of \$11,276.00; (iii) authorize the withdrawal of monies in the Series 2015 A Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve Agreement from Build America Mutual Assurance Company for the Series 2015 A Bonds Reserve Account
- J.** Consideration of **APPROVAL** of **A Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2015 C (WV SRF Program)** (the “Series 2015 C Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the funding of the Series 2015 C Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the approx. amount of \$213,468.00; (iii) authorize the withdrawal of monies in the Series 2015 C Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve Agreement from Build America Mutual Assurance Company for the Series 2015 C Bonds Reserve Account
- K.** Consideration of **APPROVAL** of **A Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2015 D (WV SRF Program)** (the “Series 2015 D Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the funding of the Series 2015 D Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the approx. amount of \$44,144.00; (iii) authorize the withdrawal of monies in the Series 2015 D Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve Agreement from Build America Mutual Assurance Company for the Series 2015 D Bonds Reserve Account
- L.** Consideration of **APPROVAL** of **A Second Supplemental Resolution of City Council relating to the Combined Utility System Revenue Bonds, Series 2019 B (WV DWTRF Program)** (the “Series 2019 D Bonds”) which would (i) authorize the amendment and modification of the Bond Ordinance of the City of Morgantown; (ii) authorize the

funding of the Series 2019 D Bonds Reserve Account through a Municipal Bond Debt Service Reserve Insurance Policy or other credit facility in the amount of \$91,445.00; (iii) authorize the withdrawal of monies in the Series 2019 D Bonds Reserve Account; and (iv) approve the Municipal Bond Debt Service Reserve Agreement from Build America Mutual Assurance Company for the Series 2019 D Bonds Reserve Account

12. CITY MANAGER'S REPORT:

13. REPORT FROM CITY CLERK:

14. REPORT FROM CITY ATTORNEY:

15. REPORT FROM COUNCIL MEMBERS:

16. EXECUTIVE SESSION:

- A. Pursuant to West Virginia State Code Section 6-9A-4(b)(9) to discuss matters protected by attorney-client privilege.

17. ADJOURNMENT:

For accommodations please call or text 304-288-7072

City of Morgantown

SPECIAL MEETING November 15, 2022

Special Meeting November 15, 2022: The Special Meeting of the Common Council of the City of Morgantown was held in Monongalia County Commission Chambers on Tuesday, November 15, 2022, at 6:01 p.m.

PRESENT: Mayor Jenny Selin, Council Members Joe Abu-Ghannam, Bill Kawecki, Ixya Vega, Dave Harshbarger, and Brian Butcher. Deputy Mayor Danielle Trumble was absent.

The meeting was called to order by Mayor Selin.

Executive Session: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss matters in considering new appointments for Board and Commissions. Motion by Councilor Vega, second by Councilor Kawecki, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:02 p.m.

Justin Hershberger – Civilian Police Review & Advisory Board

Flip Green - Civilian Police Review & Advisory Board

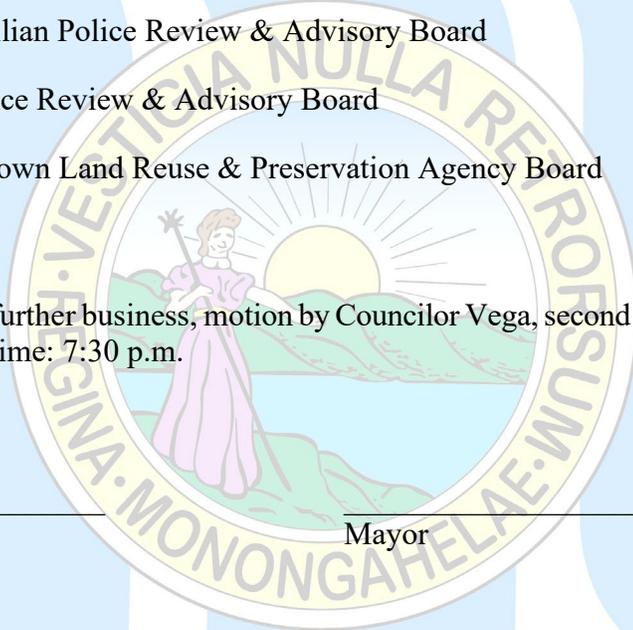
Michael Mills – Morgantown Land Reuse & Preservation Agency Board

ADJOURNMENT:

There being no further business, motion by Councilor Vega, second by Councilor Harshbarger, to adjourn the meeting. Time: 7:30 p.m.

City Clerk

Mayor



City of Morgantown

SPECIAL MEETING November 29, 2022

Special Meeting November 29, 2022: The Special Meeting of the Common Council of the City of Morgantown was held in Monongalia County Commission Chambers on Tuesday, November 29, 2022, at 6:06 p.m.

PRESENT: Mayor Jenny Selin, Deputy Mayor Danielle Trumble, Council Members Joe Abu-Ghannam, Bill Kawecki, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Mayor Selin.

Executive Session: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss matters in considering new appointments for Board and Commissions. Motion by Deputy Mayor Trumble, second by Councilor Vega, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:07 p.m.

Ben Zarazinski – Traffic Commission 4th Ward

Jon Weems – Tree Board

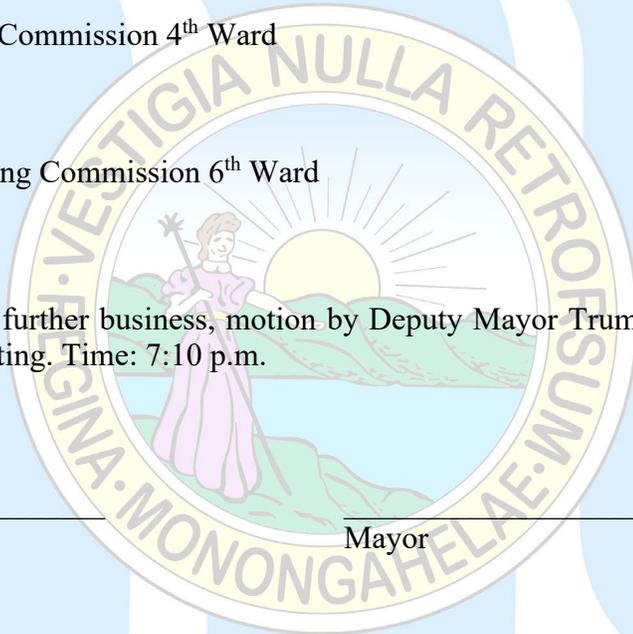
Peter DeMasters – Planning Commission 6th Ward

ADJOURNMENT:

There being no further business, motion by Deputy Mayor Trumble, second by Councilor Vega, to adjourn the meeting. Time: 7:10 p.m.

City Clerk

Mayor



City of Morgantown

Item 4D.

MINUTES COMMITTEE OF THE WHOLE MEETING November 29, 2022

The Committee of the Whole Meeting of the Common Council of the City of Morgantown was held in Monongalia County Commission Chambers, on Tuesday, November 29, 2022, at 7:19 p.m.

PRESENT: City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, Mayor Jenny Selin, Deputy Mayor Danielle Trumble, and Council Members Joe Abu-Ghannam, Bill Kaweck, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Deputy Mayor Trumble.

PRESENTATIONS:

A. Morgantown Public Library Annual Report – Sarah Palfrey, Director

Sarah Palfrey provided to council the 2022 Annual Report for the Morgantown Public Library. She also mentioned the situation with the entrance to the library and those that like to gather in front.

B. A Resolution of the City of Morgantown to Achieve Greenhouse Gas Reduction in Support of the Paris Climate Agreement

James Kotcon presented the Resolution and gave an update.

PUBLIC PORTION:

Deputy Mayor Trumble opened the public portion and asked if there was anyone wishing to speak.

Mark Brazaitis, 734 Courtney Avenue, thanked Jim Kotcon for his work on the Green Team. He stated that climate change is the issue of today and is important.

Jamie Summerlin, 209 Kingwood Street, thanked those at Wesley United Methodist Church for supporting the community and helping fee 1200 plus on Thanksgiving Day. He talked about the new SeeClickFix Morgantown 311 app, the City's 4-day work week and who to contact if an incident happens, and the Municipal City Election and moving in on with the county to allow for a higher turnout and cost savings.

There being no one else wishing to speak, Deputy Mayor Trumble closed the Public Portion.

ITEMS FOR DISCUSSION:

A. A Resolution of the City of Morgantown to Achieve Greenhouse Gas Reduction in Support of the Paris Climate Agreement

After discussion, this item was moved to the December 6, 2022, Regular Meeting Agenda.

EXECUTIVE SESSION:

Pursuant to West Virginia Code Section 6-9A-4(2)(9) to discuss acquisition or development of real estate in the

City of Morgantown

First Ward. Motion by Councilor Butcher, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Time: 8:42 p.m. Present: City Council, City Manager, and City Attorney.

Pursuant to West Virginia Code Section 6-9A-4(b)(2)(9) to discuss potential or pending litigation and matters protected by the attorney-client privilege.

ADJOURNMENT: There being no further business, motion by Councilor Vega, second by Councilor Butcher, to adjourn the meeting. Time: 10:40p.m.

City Clerk

Mayor



Ordinance 2022-18

AN ORDINANCE AUTHORIZING PURCHASE OF ASSETS AND LEASE OF SPACE FOR AN EMERGENCY RESPONDER TRAINING CENTER

The City of Morgantown hereby ordains that the City Manager is authorized to execute a Bill of Sale, Promissory Note, Security Agreement, and Lease, substantially in the form attached hereto, providing for acquisition of personal property and lease of real property for the purpose of establishing and operating an Emergency Responder Training Center and similar or related purposes, together with authority to execute such other and additional documents as may be necessary and helpful to effectuate the purposes of the transaction described in the Bill of Sale, Promissory Note, Security Agreement, and Lease and to comply with the City’s obligations under such documents and in operation of the property.

FIRST READING: **October 18, 2022**

Mayor

SECOND READING: **November 1, 2022**

ADOPTED: **November 1, 2022**

City Clerk

FILED: **November 2, 2022**

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that Glenmark Holding Limited Liability Company, a West Virginia limited liability company (the "**Seller**"), for good and valuable consideration in hand paid by The City of Morgantown, West Virginia, a municipal corporation ("**Purchaser**"), Seller does hereby transfer, sell, assign and convey to Purchaser lawful title and all of Seller's rights, title, and interests in and with respect to the assets of Seller listed as "**Purchased Assets**" on **Exhibit A**, attached hereto and incorporated herein by reference (the "**Purchased Assets**"), said Purchaser, its successors and assigns, to have and to hold the Purchased Assets for its own proper use and benefit, and grants Purchaser the option to purchase the assets of Seller listed as "**Option Assets**" on **Exhibit A** (the "**Option Assets**") subject to the terms of that certain Promissory Note executed by and between the parties as of _____, 2022 (the "Promissory Note").

Seller warrants and represents that it owns, and has the authority to sell, convey and/or assign to Purchaser the Purchased Assets and the Option Assets sold hereunder free and clear of all security interests, liens, encumbrances, interests, mortgages, claims, or charges of all kinds and every person and persons whatsoever, and that, with respect to the Option Assets, it will maintain such ownership and authority to sell such Option Assets free and clear of all security interests, liens, encumbrances, interests, mortgages, claims, or charges of all kinds and every person and persons whatsoever, in accordance with the terms of the Promissory Note. The actual consideration for the Purchased Assets under this conveyance is **\$1,000,000.00**. The actual consideration for the Option Assets under this conveyance is **\$500,000.00**.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Bill of Sale as of this ___ day of _____ 2022.

**THE CITY OF MORGANTOWN,
WEST VIRGINIA**, a municipal corporation

By: _____

**GLENMARK HOLDING LIMITED LIABILITY
COMPANY**, a West Virginia limited liability company

By: _____
Mark J. Nesselroad, Member

EXHIBIT A**Purchased Assets:**

- Action Target – Range Equipment & Bullet Proof Glass;

Option Assets:

- MILO and Simulation Room Equipment;
- Acoustic Wall Outward-Facing Soundproofing Trade Fixtures;
- Vending Equipment;
- Security Center Equipment and System;
- Classroom Furniture and Equipment; and
- Training Room Equipment and Shelving.

LEASE

This Lease is entered into this ____ day of _____ 2022 (“Effective Date”), by and between **Glenmark Holding Limited Liability Company** (“Glenmark” or “Lessor”); and **The City of Morgantown, West Virginia, a West Virginia municipal corporation** (“Lessee”). The parties agree as follows:

ARTICLE I – Premises

1.1 **Demise**: Glenmark hereby leases to Lessee, and Lessee hereby rents from Glenmark, that certain premises located within the primary and largest multi-tenant building (“Building”) situate within Sabraton Plaza shopping center (“Shopping Center”) and consisting of approximately 19,938 square feet and having an address of 1389 Earl Core Road, Morgantown, WV 26505, as more particularly outlined on the floor plan attached to this Lease as Exhibit B (“Premises”); provided, however, that Glenmark shall have the option, on 30 days’ prior notice to Lessee, to retake possession, separate from the Premises, and lease to other tenants that certain portion of the Premises consisting of a room measuring approximately 25’ x 31’ and designated as the “Dojo Room” on Exhibit B.

1.2 **Non-Exclusive Easement**: Glenmark grants to Lessee, as an appurtenance to the Premises, for the entire term of this Lease (subject to the rights of Glenmark described herein) a non-exclusive easement in common with the other tenants, occupants, and patrons of the Shopping Center in and to and for the use of the Common Areas (as defined below).

1.3 **Delivery**: Prior to the Effective Date, Lessee has inspected the Premises.

Upon the Effective Date, Glenmark shall deliver, and Lessee shall accept delivery and possession of the Premises “**As Is**,” provided, however, Glenmark shall remove its personal property from the Premises, within 90 days after the Effective Date.

ARTICLE II – Rent & Late Fee

2.1 **Rent**: Beginning on the Rental Commencement Date, Lessee shall pay to Glenmark annual rent for the Premises during the initial term of this Lease in the sum of \$240,000.00, which annual rent is to be paid by Lessee in monthly installments of \$20,000.00, in advance without notice, set off, or demand on or before the first day of each calendar month, for the initial term of this Lease. The amount of annual base rent shown above for the initial term includes base rent and Lessee’s share of Common Expenses.

2.2 **Rental Commencement Date**: Lessee’s duty to pay rent commences immediately upon the earlier of the following: (i) 90 days after the Effective Date, provided Glenmark has removed its personal property from the Premises, or (ii) the date Glenmark delivers the Premises to Lessee with its personal property removed (“Rental Commencement Date”). Upon the Rental Commencement Date, the parties shall execute a memorandum confirming such date and the initial term of this Lease, in the form attached hereto as Exhibit A.

2.2.1 If the Rental Commencement Date is on a day other than the first day of the month, the portion of rent payable for any partial month is to be calculated pro rata according to the number of days leased during the month at the applicable rent rate, and thereafter rent is due and payable on the 1st day of each calendar month during the entire term and any renewal thereof. Lessee shall make rent payments to Glenmark’s address listed in Section 16.1 of this Lease.

2.3 [Reserved]

2.4 **Late Fee**: If any rent payment, or any other payment of Lessee due therewith, is not received by Glenmark by the 10th day of the month, it is considered late, and Lessee shall automatically

pay a late fee equal to the greater of \$200.00 or 5% of the total delinquency, for each month or portion thereof that the delinquency remains unpaid.

ARTICLE III – Taxes, Assessments, & Common Expenses

3.1 Common Expenses: “Common Expenses” means the following expenses incurred by Glenmark because of ownership of the Shopping Center and Building, this Lease, or otherwise:

3.1.1 Federal, state, county, or municipal taxes (excluding any sales or income taxes), assessed, levied, or imposed against the Shopping Center and related real estate, in whole or in part, from time to time (collectively, "Taxes");

3.1.2 All fire fees or similar miscellaneous municipal or county assessments assessed against the Shopping Center, in whole or in part, assessed, levied, or imposed from time to time;

3.1.3 All expenses relating to fire and security monitoring of the Shopping Center, along with supervision of the Building;

3.1.4 All utility charges for utility systems that service the Shopping Center or Building that are not separately metered or that service Common Areas;

3.1.5 All expenses relating to the insurance, maintenance, repair, cleaning, and general upkeep of the Common Areas, including costs associated with the maintenance and repairs of the utility systems servicing the Common Areas, Common Area janitorial services, garbage removal from Common Areas, garbage collection fees for the Shopping Center, Common Area lighting, Common Area parking (cleaning, resealing, patching, paving, and restriping), and snow removal and security services with respect to Common Areas;

3.1.6 All expenses relating to the maintenance, repair, and upkeep of the Building and its shared utility systems;

3.1.7 Administrative and management fees not to exceed five percent (5%) of Common Expenses; and

3.1.8 All other expenses incurred by Glenmark for the benefit and upkeep of the Building or Shopping Center, which are in keeping with or similar in nature to the foregoing.

3.2 Common Areas: "Common Areas" means all areas of the Shopping Center that are available for the common use of the owners, tenants, and patrons of the Shopping Center, including but not limited to common parking areas, access roads and driveways, sidewalks, landscaped areas, lawn areas, utilities, and portions of the Building at which the Premises is located intended for common and shared use by owners, tenants, and patrons, excluding leased areas, conveyed areas, or areas designated to be leased or conveyed.

3.3 Payment of Common Expenses:

3.3.1 Lessee’s proportionate share of Common Expenses is included as part of Lessee’s yearly and monthly rental as stated in Section 2.1.

3.4 Personal Property, B&O, Franchise, & Other Miscellaneous Taxes & Fees: Lessee shall be responsible for timely payment of all personal property, income, unemployment compensation, business and occupation, franchise, and other miscellaneous business taxes and fees assessed against Lessee, its business, or the Premises.

ARTICLE IV – Term

4.1 Term: This Lease is effective as of the Effective Date. The term of this Lease is for ten (10) years, plus the time period from the Effective Date until the Rental Commencement Date. The term

is not subject to extension, renewal, or other modification, unless expressly amended by written agreement of the parties hereto.

4.2 Holding Over: If Lessee remains in possession of all or any part of the Premises after the expiration of the term of the Lease or any renewal thereof, Lessee shall be deemed to be occupying the Premises as a tenant from month to month at a monthly rent equal to one hundred twenty-five percent (125%) of the then current monthly rent and subject to all of the other terms and provisions hereof, except only as to the rent and term of the Lease. As a tenant on a month-to-month basis, Lessee shall vacate the Premises upon receiving thirty (30) days written notice from Glenmark.

ARTICLE V – [Reserved]

5.1 [Reserved]

ARTICLE VI – Leasehold Improvements, Fixtures, & Personal Property

6.1 Leasehold Improvements: Lessee shall not remove any leasehold improvements or fixtures, including trade fixtures, installed in or on the Premises at any time, whether installed by or on behalf of Lessee or by or on behalf of Glenmark, whether preexisting or installed after the Effective Date, except if replaced in the normal course of business with the same or better quality or if their removal is consented to in advance by Glenmark in writing. Upon expiration or earlier termination of this Lease, all leasehold improvements, fixtures, and trade fixtures are deemed part of the Premises and title thereto is vested solely in Glenmark, provided, however, that if Lessee is not in default hereunder, this provision shall not restrict, during the term of this lease, Lessee’s ownership, use, or transfer of the Purchased Assets or the Option Assets, as defined in that certain Bill of Sale executed by and between the parties as of _____, 2022.

6.2 Personal Property: All personal property, owned by Lessee and delivered to the Premises, is to remain the property of Lessee and be removable at any time, and Lessee shall remove all such personal property, and repair any damage caused by such removal, upon the expiration or termination of this Lease; provided, Lessee is not at such time in default of any terms or covenants of this Lease.

ARTICLE VII – Utilities & Services

7.1 Utilities. Lessee shall pay all charges for consumption or use of utilities at the Premises, including water, gas, sewer, and electric; Lessee shall pay all charges directly for utilities that are separately metered, and shall pay, through Common Expenses, for utilities not separately metered. Electric and gas utilities are currently directly metered for the Premises and shall be placed in the name of and directly billed to Lessee. Water is not separately metered; thus, water and any other utility costs that are paid by Lessee through Common Expenses are included as part of Lessee’s yearly and monthly rental as stated in Section 2.1. Lessee shall be solely responsible for the cost, extension, installation, maintenance, and repair of all telephone, telecommunications, data, cable, internet, I/T services, security, and other similar utilities at the Premises.

7.2 Garbage Removal & Janitorial Services: Lessee shall be responsible for janitorial services for the Premises and dispose of garbage in common dumpsters to be located in an area determined by Glenmark. If Lessee fails to observe its obligations in this Article, Glenmark, may cause such work or services to be completed and invoice Lessee for the costs associated therewith. Lessee shall be responsible for and pay, at Lessee’s sole cost and expense, all costs required to manage, remove, and dispose of any waste or garbage that exceeds a normal volume (in excess of Lessee’s percentage allocation of Common Expenses) of garbage and also all additional responsibilities and costs necessary to dispose of any abnormally odorous waste or environmentally harmful waste (i.e., lead from the shooting range backstop and HVAC filters), which waste is produced from Lessee’s use and/or occupation of the Premises.

7.3 Security: Lessee shall be solely responsible for providing security services to the Premises in a manner acceptable to Lessee. Lessee shall utilize companies and providers stipulated by Glenmark in order to fully integrate building systems (fire/security/sprinkler/other). Glenmark is not obligated to provide any security services at the Shopping Center.

ARTICLE VIII – Use, Operations, and Surrender

8.1 Permitted Use: Lessee shall utilize the Premises solely as a properly licensed and fully compliant police, defense, and firearms training center and shooting range, all subject to and fully compliant with all applicable federal, state and local licensing and applicable laws and regulations. Lessee shall ensure all aspects of the Premises, Lessee’s Buildout, construction thereof, and continuous operation and maintenance of the Premises and Lessee’s business are compliant with all zoning ordinances, building codes, laws, statutes, ordinances, rules, and regulations imposed by the City of Morgantown, State of West Virginia, Monongalia County, United States of America, NIOSH, OSHA, EPA, and other governmental or regulating entities, and Lessee shall obtain and maintain all permits and approvals for the same.

8.2 Compliance with Laws: Lessee shall ensure that all use of the Premises is in full compliance with all applicable federal, state and local laws, codes, statutes, ordinances, rules, and regulations, including but not limited to those imposed by the City of Morgantown, Monongalia County, State of West Virginia, United States of America, NIOSH, OSHA, EPA, and other governmental or regulating entities. Lessee shall obtain any required certificate of occupancy for the Premises and all appropriate business licenses, registrations, and certifications as required by law. Within a reasonable amount of time (but no more than 5 days) after Glenmark’s request, Lessee shall provide Glenmark with evidence of any such licenses and/or certifications.

8.3 Prohibited Uses: No illegal, improper, or offensive uses are permitted on the Premises or at the Shopping Center. Lessee shall do nothing that increases the risks of fire, other casualty, or liability on the Premises or at the Shopping Center beyond Lessee’s general business operations. Without express written consent of Glenmark, Lessee shall not host, sponsor, or allow to occur on the Premises or at the Shopping Center any of the following: open house, exterior display, or similar type of matter open to the public, or any other event or matter that is outside of the normal course of business of Lessee.

Lessee shall not:

8.3.1 Do anything that compromises the structural integrity of the Premises, Building, or Shopping Center;

8.3.2 Commit waste or allow anyone under its control to commit waste, by failing to take ordinary or proper care of the Premises, Building, or Shopping Center;

8.3.3 Use any advertising medium or use or permit the use of any apparatus for sound reproduction or transmission that can be heard beyond the boundaries of the Premises;

8.3.4 Fail to keep all Lessee’s mechanical apparatuses in the Premises in good condition and repair and free from vibration and other noise that may be heard or felt outside of the Premises;

8.3.5 Use any electrical appliances and other items that will overload the electrical service to the Premises, Building, or Shopping Center (If additional electric service is needed to operate Lessee's business, Lessee shall be responsible for all costs associated with said upgrade.);

8.3.6 Block or obstruct the Shopping Center access roads or any parking spaces (except normal everyday use permitted hereunder by Lessee’s employees, customers, patrons, invitees, licensees, or guests);

8.3.7 Utilize the Premises in a manner that constitutes a legal nuisance to an adjoining owner or occupant;

8.3.8 Alter any sound proofing or acoustics of the Premises that would cause gunfire, music, or other sound produced within the Premises to be heard by other tenants within the Shopping Center or by persons outside the Premises;

8.3.9 Utilize the Premises for any of the following purposes: any purposes that would constitute a legal nuisance to an adjoining owner or occupant; waste material disposal or collection facility; any dumping, disposing, incineration, or mass reduction of garbage (exclusive of garbage compactors or dumpsters provided as part of the Common Areas); any use that emits a strong, unusual, offensive, or obnoxious odor, fumes, dust, or vapors, or any sound that can be unreasonably heard outside of the Premises; any use that creates explosives or other similar hazards; any labor camp, junk yard, recycling facility, or animal stock yard; industrial or agricultural facility (including, without limitation, manufacturing, smelting, mining, rendering, brewing, refining, chemical manufacturing or processing, or other manufacturing uses); truck or auto or bus repair or storage facility; any establishment providing adult entertainment or displays of variety including or depicting nudity or lewd acts; any establishment selling or exhibiting materials or devices that are pornographic (as determined by community standards in the Monongalia County, WV area); massage parlor; facility for gambling, slot machines, on- or off-site betting, table gaming, video lottery, bingo, or similar games of chance; dance hall; bar; billiard or pool hall; night club; facility for sale of paraphernalia for use with illicit drugs; stockyards or facilities containing animals; facilities or events for the show or display or competitive use of animals; veterinary clinic; auction house; flea market; funeral home; residential housing; hotel or motel; school; car wash; gas station; athletic venue of any kind; facility for the sale or display or rental of automotive parts or accessories or supplies or maintenance items; variety or variety discount store, discount department store (including, but not limited to Dollar General, Fred’s, Bill’s, McCrory’s, Dollar Tree, Ninety-Nine Cents Only, Deals, Dollar Express, or any store operated by Variety Wholesaler’s, Inc.); seafood restaurant, quick service restaurant specializing in seafood, or facility for sale of prepared seafood as a principal business; business that sells cellular or mobile phone products or services; business that primarily leases or markets or provides or rents with the option to own or occasionally sells consumer durable goods; hearing healthcare provider; grocery supermarket; business that sells pizza or hamburgers as its primary sales item; investment brokerage, insurance sales or related financial services business; packing and shipping center offering packaging and mailing services and the retail sale of packaging materials; cannabis dispensary or business that sells cannabis (medical, recreational, or other); or any other purpose other the permitted use under Section 8.1.

8.4 [Reserved]

8.5 Signage:

8.5.1 General: For all signage, Lessee shall provide Glenmark with the proposed location, dimensions, size, content, and design of any signage, including signage provided for below, to allow Glenmark to review and approve or deny the same, which approval or denial is in the sole but reasonable discretion of Glenmark. Glenmark has no duty to construct, design, install, maintain, or repair Lessee’s signage. Lessee, at its sole cost and expense, shall be responsible for the costs of constructing, designing, installing, maintaining, and repairing Lessee’s signage. Lessee shall, at all times, maintain Lessee’s signage in good condition and repair. Lessee shall neither install nor change Lessee's signage without the prior written consent of Glenmark. Lessee shall ensure that its signs (including size, location, and style) comply with all zoning ordinances and regulations imposed by the City of Morgantown (if applicable) and other governmental entities, and Lessee shall obtain all zoning permits and approvals for Lessee’s signage. If approved by Glenmark as to its other attributes, Lessee shall ensure that its signage to be attached to the exterior of the Building is in backlit canned letter form on a raceway.

8.5.2 Locations: If approved by Glenmark as to its other attributes, Lessee may have signage in the following locations: (a) subject to availability and Glenmark’s decision as to location, one dual-sided panel on an existing exterior multi-tenant sign that is located along Earl Core Road; (b) exterior façade of the Premises or on the front corner parapet of the Building where Defense In Depth’s signage existed (provided it has not been replaced by a different tenant) in the form of backlit letters/logo on a raceway; and (c) on Lessee’s entry door / glass storefront. Such signage is subject to Section 8.5.1.

8.5.3 Advertisements: Lessee shall not place or maintain any temporary advertising, flyers, banners, other similar articles, or any other matter on the exterior of the Premises, the Building, or on the grounds of the Shopping Center without the express written consent of Glenmark on a case-by-case basis. Lessee shall ensure that all advertisements located within the Premises are professionally prepared and are displayed in a tasteful manner; no paper/cardboard/plastic flyers, strobe lighting, or flashing lights. All advertisements viewable from the exterior of the Premises, including but not limited to displays, banners, and other similar advertising on the Building, on the outside or inside of the Premises, and at the Shopping Center are subject to the signage requirements under Section 8.5.1 on a case-by-case basis.

8.6 Regulations: As the Premises is part of a larger shopping center, Glenmark reserves the right to impose rules, restrictions, and regulations, as may be defined by Glenmark, upon any portion of the Premises, Building, and/or Shopping Center to ensure the safe, efficient, and productive operation of the Shopping Center. Such rules, restrictions, and regulations may include a declaration and reciprocal easement agreement, which, if any, will be provided to Lessee and which Lessee, upon receipt, shall acknowledge it has received, reviewed, and understands. Provided said rules, restrictions, and regulations are reasonable and ordinary, Lessee shall conform thereto, upon reasonable prior written notice.

8.7 Glenmark’s Right to Inspect: Glenmark, at all reasonable times and upon 24 hours notice for non-emergency situations, has the right to enter upon and examine the Premises, show the Premises to prospective purchasers or tenants, and/or make such inspection, repairs, alterations, improvements, or additions as Glenmark may deem necessary for the protection of the Premises. Lessee shall bear the expense of said repairs unless the repaired items are the responsibility of Glenmark as stated herein. At any time during the last 180 days of the term of this Lease, Glenmark may erect signs advertising the Premises for lease and, upon 24 hours notice (oral or written), may show the Premises to prospective tenants during Lessee’s hours of operation.

8.8 Surrender of Premises: At the end of the term of this Lease, however determined, in addition to Lessee’s other duties under this Lease, Lessee shall peaceably deliver to Glenmark the Premises vacant (subject to Article VI), unencumbered, in good repair, and broom clean, ordinary wear and tear excepted.

8.9 Parking: Lessee has non-exclusive access and an easement in common with other tenants of the Shopping Center for common customer/visitor/employee parking. The parking spaces are generally not reserved and are intended to be used by the customers, patrons, invitees, licensees, and guests of the owners and tenants of the Shopping Center without charge. Lessee shall ensure its employees utilize the parking areas behind or farthest from the Building but not adjacent to buildings within the Shopping Center. Lessee shall not use parking areas for any forbidden use or for other business, temporarily or permanently. Lessee shall not rent parking spaces to others or its customers, patrons, invitees, licensees, or guests. Lessee shall not permit vehicles owned, operated, or controlled by Lessee or its employees, agents, customers, patrons, invitees, licensees, or guests to remain parked or generally idle upon the Shopping Center for periods of more than twenty-four (24) hours. All large trucks or other vehicles owned and operated by Lessee or its agents are prohibited from parking in a manner that reduces visibility/accessibility/operation of the Shopping Center or violates Section 8.3.6. The parking areas of the Shopping Center are Common Areas; yet, Glenmark reserves the right to dedicate or reserve portions of the parking spaces for specific occupants of the Shopping Center.

8.10 Deliveries: All deliveries to the Premises are to be made at times and in a manner that do not disrupt the business of other owners, tenants, or occupants of the Shopping Center and in a manner that does not interfere with the flow of traffic in the Shopping Center.

ARTICLE IX – Alterations, Improvements, & Maintenance

9.1 Alterations and Improvements: Lessee shall neither make any exterior or structural alterations, additions, improvements, changes, or roof cuts to the roof of the Building, nor install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades, or awnings, without the express prior written consent of Glenmark, which consent will not be unreasonably withheld if such alterations do not adversely impact the value of the Building, do not adversely affect the operations of any other occupants of the Shopping Center, and are architecturally compatible with the Shopping Center. Lessee shall present to Glenmark plans and specifications for alterations and improvements at the time approval is sought. After notification from Lessee to Glenmark, Lessee has the right, without Glenmark's consent, to make or cause to be made, interior alterations or improvements to the Premises not exceeding \$5,000.00 that do not adversely impair the structural quality of the Building, adversely impair the value of the Premises or Building, do not adversely affect the operations of any other occupants of the Shopping Center, are architecturally compatible with the Shopping Center, and are otherwise in compliance with this Lease. Lessee shall ensure that all alterations and improvements are in a good and workmanlike manner and are constructed and made in accordance with all applicable laws, zoning, and building codes and performed by licensed, insured, and bonded contractors subject to Glenmark’s approval. All improvements and alterations made by Lessee become property of Glenmark at the expiration of the term of this Lease unless Glenmark specifically agrees, in writing, that Lessee may remove any such alterations.

9.2 Maintenance: Lessee shall, at all times, generally maintain the appearance, cleanliness, repair and replacement, and day-to-day upkeep and operation of the Premises (including, without limitation, all doors; entrances/exits; locks; windows; glass; interior walls and partitions; MILO and simulation room equipment; vending equipment; security center equipment and system classroom furniture, trade fixtures, and equipment; training room equipment and shelving; shooting range walls, acoustic wall trade fixtures and soundproofing, ceiling, bullet traps (e.g., shooting range backstops), and Action Target range equipment and bullet proof glass) and related items, trade fixtures, equipment, furnishings, lighting, signage, hot water tanks, floor surfaces, moldings, bulkheads, ceiling, and interior utilities solely servicing the Premises) in good order, condition, and repair at its sole expense and consistent with the quality and presentation of first-class commercial space. Such maintenance includes, but is not limited to, removal of ice and snow from the sidewalk surrounding the Premises, continuous operational ADA compliance of the Premises, interior janitorial services and interior maintenance of the Premises, changing light bulbs, interior painting, clearing interior plumbing drains (and any exterior utility work required because of clogged interior plumbing drains), window and floor and general cleaning, and any interior or exterior maintenance and repair necessitated by willful act, misconduct, or negligence of Lessee. Lessee shall keep the Premises free from rubbish and debris. As to bullet traps (e.g., shooting range backstops) and servicing the removal of lead, replacement of rubber, and similar maintenance, Lessee shall provide to Glenmark all documentation evidencing such services and/or a copy of such contract to Glenmark, on a basis no less than the manufacturer’s suggested timeframe or annually, whichever is less. Lessee shall reimburse Glenmark for all HVAC filter changes, upkeep, repairs, and replacements; provided that any capital expense HVAC replacement expenses will be amortized over the useful life of the underlying improvement. Except for a short term basis, not to exceed 48 hours, Lessee shall not store materials, equipment, or other personal property outside of the Building. Lessee shall ensure that all its maintenance is performed in a good and workmanlike manner, in accordance with all applicable laws, zoning, and building codes, and, if performed by someone other than Lessee, performed by licensed and insured contractors subject to Glenmark’s approval.

9.2.1 Pests & Plumbing: Lessee shall keep the Premises free from pests. Lessee shall contract with a pest extermination company and have the Premises treated for pests at least monthly and such additional times as are reasonably necessary to keep the Premises pest free. Lessee shall provide to Glenmark any documentation evidencing such pest extermination services and/or a copy of such contract to Glenmark. Lessee shall ensure that the plumbing facilities of the Premises and, Lessee's use of plumbing related to the Building, are not used for any other purpose than that for which they are constructed and no foreign substance of any kind, including but not limited to chemicals and synthetic substances that the plumbing was not designed to facilitate, is poured or disposed of therein; Lessee shall solely bear the expense of any breakage, stoppage, or damage resulting from a violation of this requirement.

9.2.2 Structural & Other: Glenmark shall generally maintain and repair the Common Areas and structural components, major mechanical, HVAC (subject to Lessee reimbursement as stated above), roof, foundation, siding, exterior painting, and exterior utility components of the Premises, Building, and Shopping Center; however, if any damage to the Premises, Building, or Shopping Center is caused by Lessee's use of the Premises or the willful act, misconduct, or negligence of Lessee, its employees, agents, customers, invitees, successors, or assigns, Lessee shall be solely liable for all costs associated with repairing such damage and shall repair such damage or replace the damaged equipment, structure, fixture, or improvement as specified and required by Glenmark in Glenmark's sole but reasonable discretion. Lessee shall immediately notify Glenmark of any items needing addressed pursuant to Glenmark's maintenance and repair responsibilities hereunder; if Lessee fails to do so, Lessee shall be liable as stated above.

ARTICLE X – Insurance

10.1 Insurance: Lessee shall, at all times during the entire term of this Lease, procure and keep in full force and effect the following:

10.1.1 Liability Insurance: a comprehensive policy of general or business liability insurance on an occurrence basis with respect to the Premises and the business operated by Lessee thereon in which the combined limits of liability are not less than \$1,000,000.00 per accident or occurrence in respect of bodily injury and damage to persons or property;

10.1.2 Fire and Extended Property Coverage: fire, vandalism, malicious mischief, and additional peril insurance with "All-Risk," Extended Coverage covering and insuring all of Lessee's interest and personal property in or about the Premises, in an amount equal to 100% of the full replacement value thereof, as determined annually by a qualified insurance appraiser or consultant, and rental insurance in amounts sufficient to pay all amounts required herein to be paid by Lessee for any period of up to 3 months in which the Premises may be damaged or destroyed (Glenmark is not obligated to insure Lessee's business or personal property.);

10.1.3 Worker's Compensation: worker's compensation coverage in accordance with all applicable West Virginia statutes and regulations for all of its employees employed at the Premises who are eligible for such compensation coverage (Lessee shall make all payments and fund contributions necessary to secure and provide full and complete coverage and protection as required by West Virginia law.);

10.1.4 Employer's Liability. a policy of employer's liability insurance in which the combined limit is not less than \$1,000,000.00 per accident for bodily injury or disease; and

10.1.5 Other Insurance. a policy of business interruption and extra expense coverage to include rental payment continuation for a minimum of 12 months, loss of profits, and other extra expenses experienced during recovery from property loss; plate glass coverage for replacement of glass from breakage; automobile liability insurance for owned or hired vehicles, with a combined single limit of

not less than \$1,000,000 or, if higher, that amount as may be required by statute or rule of the state or locality; and umbrella insurance in the minimum amount of \$5,000,000.

10.2 Provisions/Procurement of Policies: All insurance required hereunder may be carried under blanket policies maintained by the party required to maintain such insurance. Any insurance required to be carried by Lessee is to contain provisions that: (a) the policy is not subject to cancellation or change, except after the giving of at least 30 days written notice to all parties named as insured therein, (b) that notice is received and accepted that the insured has waived right of recovery from Glenmark for any damage or loss caused by the risks covered in such policy, and (c) names Glenmark, Lessee, and any persons, firms, or corporations having an insurable interest designated by Glenmark and by Lessee, as insureds/loss payees, as their interests may appear.

10.3 Proof/Certificates. Lessee shall, annually, provide Glenmark with written evidence of these insurance coverages and their required provisions under this Article. In addition, any party obligated to maintain the insurance policies hereunder shall, within 15 days after request thereof, deliver to the other party a certificate of insurance naming the other party as an additional insured, evidencing that the insurance required hereunder is in full force and effect.

ARTICLE XI – Waiver, Release, & Indemnity

11.1 Waiver: Glenmark/Lessee hereby releases Lessee/Glenmark from and waives any and all liability or responsibility to Lessee/Glenmark or anyone claiming through or under Lessee/Glenmark by way of subrogation for any loss or damage specifically insured against or required by the terms hereof to be insured against by Glenmark/Lessee or anyone for whom Glenmark/Lessee is responsible hereunder. All policies of insurance pertaining to the Building, the Shopping Center, the Premises, and/or its contents are to be endorsed to provide that the insurance company may not be subrogated with respect to insurance carried by Lessee against Glenmark. Neither Lessee nor Lessee’s insurance company or companies are to have any right of action against Glenmark for any loss or damage to Lessee’s property in or about the Premises when such loss or damage is in fact covered, or required by the terms hereof to be covered, by insurance carried by Lessee. Neither Glenmark nor Glenmark’s insurance company or companies are to have any right of recovery against Lessee for any loss or damage to the Building, the Shopping Center, the Premises, or to Glenmark’s property in or upon the foregoing when loss or damage is in fact covered, or required by the terms hereof to be covered, by insurance carried by Glenmark. Nothing contained in this Article is to be construed to prevent Glenmark from pursuing any claim against Lessee for punitive or consequential damages.

11.2 Mutual Release of Liability: No party hereto is to be liable to the other for damage arising out of the occurrence of damage to or destruction of the Shopping Center, Building, the Premises, or the contents thereof by fire or other casualty, when such loss is fully covered and paid for by any insurance policy of either party; the parties hereby waive all claims against one another for any such damages, whether or not such damage or destruction be the result of negligence on the part of any party hereto, its agents, servants or employees.

11.3 Indemnification:

11.3.1 Lessor: Glenmark shall indemnify Lessee and save it harmless from and against any and all claims, actions, damages, liability, and expenses in connection with loss of life, personal injury, environmental hazards or violations, criminal acts, destruction and/or damage to property arising from or out of the development, operation, use, management, maintenance, or ownership by Glenmark of the Premises or occasioned wholly or in part by an act or omission of Glenmark, its agents, contractors, customers, employees, or invitees, except for claims or liability arising from the grossly negligent act or omission or willful misconduct of Lessee, or its agents or employees, or solely from Lessee’s failure to perform any of its duties under this Lease.

11.3.2 Lessee: To the extent permitted by law, Lessee shall indemnify and defend Glenmark and save it harmless from and against any and all claims, actions, damages, liability, and expenses in connection with loss of life, personal injury, environmental hazards or violations, criminal acts, destruction and/or damage to property arising from or out of the occupancy or use by Lessee of the Premises or the operation of Lessee’s business or any equipment and machinery situated on the Premises under the control of Lessee, its agents, contractors, customers, employees, or invitees, or occasioned wholly or in part by an act or omission of Lessee, its agents, contractors, customers, employees, or invitees, except for claims or liability arising from the grossly negligent act or omission or willful misconduct of Glenmark, or its agents or employees, or solely from Glenmark’s failure to perform any of its duties under this Lease.

11.3.3 If Glenmark/Lessee is made a party to any litigation for which Lessee/Glenmark owes Glenmark/Lessee a duty to indemnify and save harmless hereunder, Lessee/Glenmark shall protect and hold Glenmark/Lessee harmless and shall pay all costs, expenses, and reasonable attorneys’ fees incurred or paid by Glenmark/Lessee in connection with such litigation.

ARTICLE XII – Damage or Destruction

12.1 If the Premises is damaged, destroyed, or rendered partially untenable for its intended use by fire or other casualty, Glenmark, in its sole discretion, has the option of either terminating this Lease or repairing the Premises. If Glenmark elects to repair the Premises, any rental due hereunder is to be proportionally reduced according the area of the Premises that is unusable by Lessee until the Premises is repaired or restored as herein provided. If Glenmark elects to repair and discovers such repairs will take more than 120 days to complete or the insurance proceeds are insufficient to complete the restoration, Glenmark or Lessee may, within 30 days after the date of such discovery, terminate this Lease by giving the other party written notice. If this Lease is so terminated, all rent is to be prorated to the date of such destruction, and all insurance proceeds payable on account of the damage, destruction, or casualty to the Premises are to belong to Glenmark, and Lessee is to have no claim against such insurance proceeds.

12.2 Notwithstanding anything stated herein, if the Premises, Building, Shopping Center, or any of its utilities or HVAC system are damaged or otherwise need repair or maintenance because of the negligence, intentional, or willful and wanton misconduct of Lessee, its employees, customers, patrons, invitees, or licensees, Lessee shall be responsible for all costs and expenses associated therewith, to the extent not covered by Lessee’s insurance.

12.3 If there is a total destruction of the Premises by fire or otherwise, the Lease portion of this agreement may terminate at the option of Lessee, and if Lessee exercises its right to terminate, Glenmark shall be liable for reimbursement to Lessee for any rent paid in advance but not yet accrued as of the date of said total destruction.

12.4 If the Premises or any part thereof is taken or condemned for a public or quasi-public use, this Lease is to, as to the part so taken, terminate as of the date title vests in the condemner, and the rent is to be adjusted accordingly as to the part so taken, or is to cease if the entire Premises be so taken. In no event is any part of any condemnation award to belong to Lessee, but the same is to be the sole, absolute, and exclusive property of Glenmark.

ARTICLE XIII – Default by Lessee

13.1 Event of Default: Any one or more of the following events constitute an "Event of Default":

13.1.1 The failure of Lessee to pay any installment of rent, Common Expenses, or other sum of money within 10 days after notice to Lessee that the same is due; provided, Glenmark is not to be

obligated to give Lessee notice of late payments more than 2 times in any 12 month period, and on the third time a payment is late it is an immediate Event of Default without notice or grace period.

13.1.2 A breach or event of default by Lessee under and/or non-renewal or termination by Lessee of that certain Promissory Note dated _____, by and between Glenmark and Lessee ("Promissory Note"), prior to the expiration.

13.1.3 [Reserved]

13.1.4 Default by Lessee in the performance or observance of any covenant, duty, or agreement of this Lease (other than a default involving the payment of money), which default is not cured within 30 days after the giving of notice thereof by Glenmark, unless such default is of such nature that it cannot be cured within such 30 day period, in which case no Event of Default is to occur so long as Lessee commences the curing of the default within such 30 day period and thereafter diligently prosecutes the curing of same; provided, however, if Lessee defaults in the performance of any such covenant, duty, or agreement of this Lease more than one time in any 12 month period notwithstanding whether such default is cured by Lessee, any further similar default is deemed an Event of Default without the ability for cure.

13.1.5 The sale of Lessee's interest in the Premises under attachment, execution, or similar legal process.

13.1.6 If Lessee is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law, or if an order for relief is entered against Lessee under the Federal Bankruptcy Code, and if such adjudication or order is not vacated within 10 days.

13.1.7 The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Lessee or the filing of a voluntary or involuntary petition proposing the adjudication of Lessee as bankrupt or insolvent, or the reorganization of Lessee, or an arrangement by Lessee with its creditors, unless the petition is filed or case commenced by a party other than Lessee and is withdrawn or dismissed within 30 days after the date of its filing.

13.1.8 The appointment of a receiver or trustee for the business or property of Lessee, unless such appointment is vacated within 10 days of its entry or the making by Lessee of an assignment for the benefit of its creditors, or if in any other manner Lessee's interest in this Lease passes to another by operation of law.

13.1.9 The vacation or abandonment of the Premises by Lessee at any time.

13.1.10

13.1.11 The occurrence of any other event described as constituting an "Event of Default" elsewhere in this Lease or the Promissory Note.

13.2 Remedies: Upon an Event of Default, Glenmark has the right, in addition to all other rights and remedies at law, in equity, and under this Lease, to do any one or more of the following:

13.2.1 Termination of Lease: Glenmark may terminate this Lease, by written notice to Lessee, without any right by Lessee to reinstate its rights by payment of rent due or other performance of the terms and conditions hereof. Upon such termination, Lessee shall immediately surrender possession of the Premises to Glenmark, and Lessee shall immediately pay to Glenmark an amount equal to the aggregate of all rent that then remains due to Glenmark but unpaid by Lessee up to the termination date.

13.2.2 Reletting. With or without terminating this Lease, as Glenmark may elect, Glenmark may re-enter and repossess the Premises, or any part thereof, and lease it to any other person upon such terms as Glenmark shall deem reasonable, for a term within or beyond the term of this Lease; provided, that any such reletting prior to termination is to be for the account of Lessee, and Lessee shall remain liable for (i) all rent, Common Expenses, and other sums that would be payable under this Lease

by Lessee in the absence of such expiration, termination, or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Lessee after deducting from such proceeds all of Glenmark's expenses, reasonable attorneys' fees and expenses, employee's expenses, alteration costs, expenses of preparation for such reletting, and all costs and expenses, direct or indirect, incurred as a result of Lessee's breach of this Lease. If the Premises are, at the time of default, sublet or leased to others, Glenmark may, as Lessee's agent, collect rents due from any subtenant or other tenant and apply such rents to the rent and other amounts due hereunder without in any way affecting Lessee's obligations to Glenmark hereunder. Such agency, being given for security, is hereby declared to be irrevocable.

13.2.3 Acceleration of Rent. Glenmark may declare all rent for the entire balance of the then current term immediately due and payable, together with all other charges, payments, costs, and expenses payable by Lessee as though such amounts were payable in advance on the date the Event of Default occurred; provided, however, that in the event that such acceleration is not allowed by applicable laws governing the Lessee, Glenmark may declare all rent for the entire balance of the current fiscal year of Lessee immediately due and payable, together with all other charges, payments, costs, and expenses payable by Lessee as though such amounts were payable in advance on the date the Event of Default occurred.

13.2.4 Right of Distress and Lien: Glenmark has, to the extent permitted by law, a right of distress for rent and lien on all of Lessee's property in the Premises, as security for rent and all other charges payable hereunder.

13.2.5 Rent: If Glenmark does not terminate this Lease, Lessee's rental rate is to increase one hundred twenty-five percent (125%) of the then current rental rate paid by Lessee.

13.2.6 Survival of Lessee's Obligations: No expiration or termination of this Lease and no repossession of the Premises or any part thereof is to relieve Lessee of its liabilities and obligations hereunder, all of which are to survive such expiration, termination, or repossession, and Glenmark may, at its option, sue for and collect all rent and other charges due hereunder at any time as when such charges accrue. However, the parties expressly agree that if Glenmark exercises its remedy of terminating this Lease, no rent is to accrue and be payable to Glenmark by Lessee after the date that Glenmark elects to terminate this Lease.

13.2.7 Not Exclusive Right: Except as to and between Subsections 13.2.1 and 13.2.2 of this Article, no right of remedy hereon conferred upon or reserved to Glenmark is intended to be exclusive of any other right or remedy herein or by law provided, but is to be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law, in equity, and by statute.

13.2.8 Expenses: If Glenmark commences suit for the repossession of the Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Lessee to be kept or performed, and a breach is established, Lessee shall pay to Glenmark all expenses incurred in connection therewith, including reasonable attorneys' fees.

13.2.9 Change of Locks. Upon Glenmark providing Lessee notice of Event of Default, Glenmark shall be entitled to immediately change the locks for the Premises and control or limit access to the Premises until such time as Lessee corrects the Event of Default to Glenmark's satisfaction.

ARTICLE XIV – Default by Glenmark

14.1 Glenmark's Right to Cure: Glenmark is not, in any event, to be charged with default in the performance of any of its obligations hereunder unless and until Glenmark has failed to perform such obligations within 30 days (or such additional time as is reasonably required to correct any such default) written notice to Glenmark by Lessee properly specifying wherein Glenmark has failed to perform any such obligations. Such notice is to be computed from the date of Glenmark's receipt. If Glenmark's

failure to perform or observe any covenant or obligation of this Lease cannot be cured by Glenmark within 30 days after the giving of notice thereof by Lessee, Lessee shall not charge Glenmark with default if Glenmark commences the curing of the default within such 30 day period and thereafter diligently pursues the curing of same. Upon an event of default by Glenmark hereunder, Lessee may pursue all rights and remedies it has at law, in equity, and under this Lease.”

ARTICLE XV – Estoppel / Subordination and Attornment

15.1 **Estoppel:** At any time and from time-to-time during this Lease, within 15 days after request by Glenmark, Lessee shall deliver to Glenmark a written statement, in recordable form, certifying Lessee has accepted possession of the Premises, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and that the dates to which the rent and other charges have been paid in advance, if any; and certifying that there are no defenses or offsets thereto, or stating those claimed by Lessee. If Lessee fails to submit the necessary documentation as required by this Section 15.1 within the time period, the applicable estoppel shall be deemed approved and Glenmark may take all necessary action to execute the estoppel on Lessee’s behalf and Lessee appoints Glenmark its attorney-in-fact for such execution.

15.2 **Subordination and Attornment:**

15.2.1 For the purposes of this Lease, the following terms mean as follows:

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

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

"Mortgagee" shall mean the holder of any debt instrument, now or hereafter existing, the payment of which is secured by a Security Instrument that encumbers or places a lien upon Glenmark’s interest in and to the Premises.

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

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

15.2.3 Lessee hereby attorns to and recognizes (i) any Mortgagee; (ii) any purchaser, including any Mortgagee, at a foreclosure sale, whether judicial or non-judicial in nature, under a Security Instrument; (iii) any transferee, including any Mortgagee, which acquires the Premises by way of a deed

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

15.2.4 Lessee shall not have the power, right, or authority to encumber Lessee's interest in and to the Premises without Glenmark's prior express written consent; but regardless, however, Lessee shall have neither the power, right, nor authority to encumber Glenmark's interest in and to the Premises.

15.2.5 Lessee shall not execute, acknowledge, or deliver any Security Instrument that places an Encumbrance on the Premises, in whole or in part, or subjects the Premises, in whole or in part, to any Encumbrance, without the 30 days notice to and prior express written consent of Glenmark. Furthermore, in the event any such Security Instrument is assigned, Lessee and such Leasehold Mortgagee shall notify Glenmark, in writing, of such assignment and the address of such assignee.

15.2.6 If Glenmark gives notice to Lessee with respect to or in connection with any Event of Default by Lessee, Glenmark shall also serve a copy of such notice upon each Leasehold Mortgagee and the assignee, if any, of any such Lease Mortgagee with respect to which Glenmark has received notice in accordance with the provisions of Section 15.2.5 of this Lease. Upon the receipt of such notice by such Leasehold Mortgagee or its assigns, the same is to have the right and opportunity to cure or remedy or cause to be cured or remedied any breach or default within the same time period provided to Lessee, and Glenmark shall accept such performance by the same as if the same had been done or performed by Lessee.

15.2.7 In the event any Leasehold Mortgagee exercises its rights of foreclosure, Assignment, or otherwise, and such Leasehold Mortgagee, its successors or assigns, becomes the holder of the leasehold estate of Lessee, Glenmark shall recognize such Leasehold Mortgagee, its successors or assigns, as the Lessee hereunder, subject to all terms and conditions of this Lease and subject to all uncured Lessee Events of Default.

ARTICLE XVI – Miscellaneous

16.1 Notices: Unless otherwise provided for in this Lease, any party giving or making any notice, request, demand, or other communication shall make the notice in writing and delivery by either hand delivery, reputable overnight express courier with fees prepaid and delivery confirmation, or certified mail with postage prepaid and return receipt requested. Notice by any other means is ineffective and void. Except as otherwise provided in this Lease, notice is deemed delivered and received upon the earlier of the following: (a) upon the other party obtaining possession or knowledge of its contents by way of the delivery methods described above, (b) 3 business days after deposit in the U.S. Mail, (c) the next business day if delivered by overnight express, or (d) the same day if by hand delivery. Any party giving notice shall properly address the notice to the appropriate person or entity at the last-known address of the party to whom the notice is to be given, as follows (phone/e-mail are for convenience only; not required):

- If to Glenmark: Glenmark Holding Limited Liability Company
Attn: Mark J. Nesselroad
1399 Stewartstown Road, Suite 200
Morgantown, WV 26505
- If to Lessee: City of Morgantown
Attn: Finance Director
389 Spruce Street

Morgantown, WV 26505

Each party may, from time to time, designate a different address by providing all other parties with written notice of the change in conformity with this Article.

16.2 Governing Law & Legal Fees: This Lease is to be governed in accordance with the laws of the State of West Virginia. If litigation arises between the parties regarding this Lease, the prevailing party is to be awarded court costs and reasonable attorneys' fees.

16.3 Waiver of Jury Trial: In the event of a dispute hereunder that leads to litigation, all parties hereto waive their rights to a trial by jury.

16.4 Entire Agreement: This Lease sets forth the entire understanding of the parties with respect to the subject matter hereof. Any previous agreements or understandings between the parties regarding the subject matter hereof are superseded by this Lease.

16.5 Partial Invalidity: If any term, covenant, or provision of this Lease, or the application thereof to any person or circumstances, is held, at any time or to any extent, to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, is not to be affected thereby, and each term, covenant, condition, and provision of this Lease is to be valid and be enforced to the fullest extent permitted by law.

16.6 Recording/Disclosure: Lessee shall neither record this Lease nor cause it to be disclosed to the public.

16.7 Assignment, Subletting, & Attornment: Lessee shall neither assign this Lease, in whole or in part, nor sublet any portion of the Premises without obtaining the prior written consent of Glenmark at Glenmark's discretion. Furthermore, without the prior written consent of Glenmark, Lessee has no right or power to encumber the interest of Lessee in and to the Premises. Glenmark is entitled to sell all or any portion of the Shopping Center. If Glenmark elects to sell the Building, Glenmark may assign this Lease to the purchaser without Lessee's prior consent, and Lessee shall fully release Glenmark from all of its obligations under this Lease, effective as of the date of the assignment. Lessee shall attorn to and recognize any new owner as the landlord of this Lease.

16.8 Amendments and Waiver: This Lease cannot be amended, except in writing, signed by all parties hereto, except for the change of address provision. No waiver by any party at any time, express or implied, or any breach, of any provision of this Lease is to be deemed a waiver or breach of any other provision of this Lease or consent to any subsequent breach of the same or any other provision.

16.9 No Accord and Satisfaction: No acceptance by Glenmark of a lesser sum than the rents or other charges then due is, nor is any endorsement or statement on any check or any letter accompanying any check or payment to be deemed an accord and satisfaction.

16.10 No Partnership: As a result of this Lease, no party hereto, in any way or for any purpose, becomes a partner, joint venture, or member of a joint enterprise with the other party in the conduct of its business or otherwise. The relationship of Glenmark and Lessee, as established by this Lease, is strictly that of landlord and tenant.

16.11 Computation of Days: Unless otherwise specifically indicated, in computing the number of days for any purpose under this Lease, all days are counted, including Saturdays, Sundays, and holidays.

16.12 Brokerage: It is disclosed that Mark J. Nesselroad is a principal/beneficial owner of Glenmark and also a licensed real estate broker with Black Diamond Realty LLC. Neither party was represented by a broker as part of this Lease. Each party shall pay its own broker's commission/fee, if any.

16.13 Fiscal Year Funding: The parties recognize and agree that borrower is a municipal corporation and political subdivision of the State of West Virginia that is not permitted to obligate funds not available during the current budget year, and that Borrower’s obligations under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by Morgantown City Council or otherwise being available for this service. If funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on the last day of the fiscal year during which the agreement is executed. City agrees to use its best efforts to have the amounts contemplated under the agreement appropriated for the services provided in the agreement. Non-appropriation or non-funding shall not be considered an event of default.

[SIGNATURE PAGE TO LEASE FOLLOWS]

[SIGNATURE PAGE TO LEASE]

The parties sign, each as of the Effective Date:

Glenmark: **Glenmark Holding Limited Liability Company,**
a West Virginia limited liability company

By: _____
Mark J. Nesselroad, Member

Lessee: **The City of Morgantown, West Virginia,**
a West Virginia municipal corporation

By: _____
A. Kim Haws, City Manager

EXHIBIT A

Memorandum of Rental Commencement Date

This Memorandum of Rental Commencement Date is effective as of the ____ day of _____ 20__ (“Memorandum Date”), by and between **Glenmark Holding Limited Liability Company**, a West Virginia limited liability company having an address of 1399 Stewartstown Road, Suite 200, Morgantown, West Virginia 26505 ("Glenmark"); **The City of Morgantown**, West Virginia, a West Virginia municipal corporation, having an address of 389 Spruce Street, Morgantown, WV 26505 (“Lessee”).

Glenmark and Lessee entered into a lease dated _____, 20__ (“Lease”), demising commercial space consisting of a total of approximately 19,938 +/- square feet, located at 1389 Earl Core Road, Morgantown, WV 26505, as more particularly described in the Lease.

Pursuant to Section 2.2 of the Lease, Glenmark and Lessee, intending to be legally bound hereby, acknowledge and agree that the Rental Commencement Date is on the ____ day of _____ 20__, and that the initial term of the Lease ends on the ____ day of _____ 20__, at 11:59 PM, unless extended or terminated early as provided in the Lease. As supplemented hereby, the Lease is to continue in full force and effect.

The parties execute this Memorandum of Rental Commencement Date as of the Memorandum Date, each by its duly authorized agent or officer.

Glenmark:

Glenmark Holding Limited Liability Company,
a West Virginia limited liability company

By: _____
Mark J. Nesselroad, Member

Lessee:

The City of Morgantown, West Virginia,
a West Virginia municipal corporation

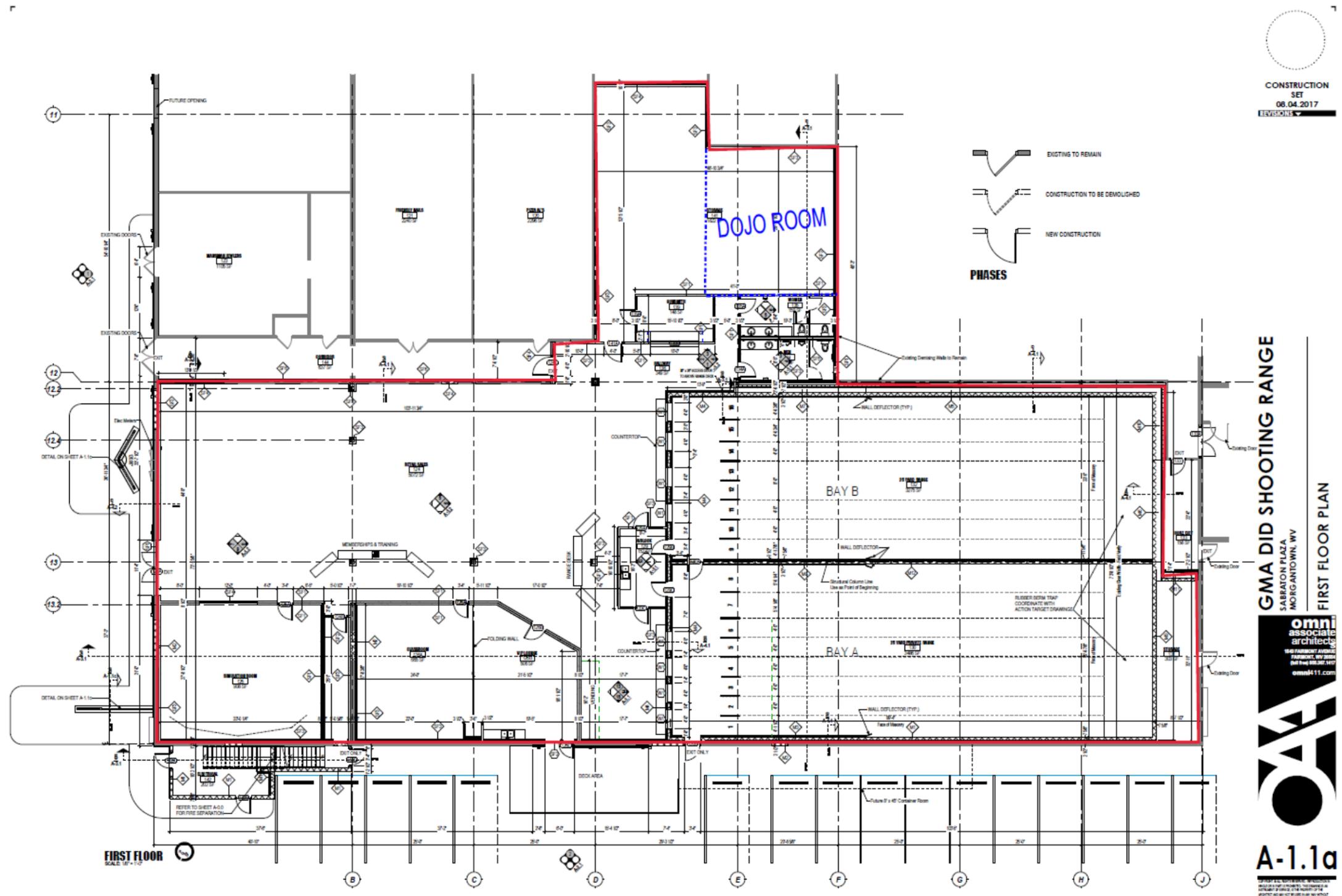
By: _____

Print: _____

Title: _____

EXHIBIT B

Floor Plan



CONSTRUCTION SET
08.04.2017
REVISED

PHASES

- EXISTING TO REMAIN
- CONSTRUCTION TO BE DEMOLISHED
- NEW CONSTRUCTION

GMA DID SHOOTING RANGE
SABBATION PLAZA
MORGANTOWN, WV
FIRST FLOOR PLAN

omni
associate
architects
160 FARMINGTON AVENUE
MORGANTOWN, WV 26501
TEL: 304.528.1977
www.oa11.com

OA

A-1.1a

FIRST FLOOR
SCALE: 1/8"=1'-0"

PROMISSORY NOTE

Principal Amount: \$1,500,000.00

Effective Date: _____, 2022

PROMISE TO PAY. The City of Morgantown, West Virginia, a municipal corporation having the address 389 Spruce Street, Morgantown, West Virginia 26505 (the "Borrower"), promises to pay to the order of **Glenmark Holding Limited Liability Company**, a West Virginia limited liability company having the address 1399 Stewartstown Road, Suite 200, Morgantown, West Virginia 26505 ("Lender"), in lawful money of the United States of America, the principal amount of **One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00)**, or so much as may be outstanding ("Obligation").

INTEREST RATE. Interest on this Promissory Note and the outstanding balance of the Obligation shall accrue at the lowest applicable federal rate allowed by law. Interest shall be calculated as accruing beginning on the Effective Date herein, and ending upon the full payment of this Promissory Note.

PAYMENT. The Obligation shall be repaid by Borrower based as follows:

A. Borrower shall make a payment of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) within fifteen (15) calendar days of the execution of this Promissory Note (the "Initial Payment").

B. The remaining balance of the Obligation, being a total of One Million and 00/100 Dollars (\$1,000,000.00), plus any and all accrued interest due (the "Remaining Balance"), if not already paid, shall be due and payable in full on **December 31, 2032** (the "Remaining Balance Maturity Date").

C. Provided, however, if Borrower (1) pays the Initial Payment pursuant to the terms herein, and (2) fulfills the full lease term of and all material obligations under that certain Lease Agreement dated _____, 2022 (the "Lease"), by and between Borrower and Lender, for that certain premises located at 1389 Earl Core Road, Morgantown, West Virginia, consisting of 19,938 square feet, more or less, within the Sabraton Plaza (the "Leased Premises"), Lender hereby agrees that the Remaining Balance shall be forgiven in full.

D. Provided, further, that during the term of the Lease, excluding any extensions or succeeding terms of such lease, Borrower shall exercise its best efforts to obtain grant funds in the amount of up to Five Hundred Thousand Dollars (\$500,000.00) for and in relation to the purchase of the Option Assets as identified in that certain Bill of Sale executed by and between the parties as of _____, 2022, (the "Grant Funds") and, in the event Borrower receives the Grant Funds, or a portion thereof, Borrower shall transfer such funds to Lender and Borrower and Lender shall agree, in the exercise of their reasonable discretion, on transfer of the Option Assets or a portion thereof to Borrower substantially equivalent to the value of the Grant Funds delivered to Lender.

PREPAYMENT. There shall be no prepayment penalty for the Obligation.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Promissory Note:

A. The failure to make prompt payment of any installment payment on this Promissory Note when due or payable.

B. The breach of any covenant, condition, or agreement made by Borrower under this Promissory Note or that certain accompanying Security Agreement dated of even date herewith.

C. A breach or event of default by Borrower under and/or termination by Borrower of the Lease prior to the expiration thereof.

LENDER'S RIGHTS. Upon the occurrence of an Event of Default, Lender may, upon demand, declare the entire unpaid principal balance on this Promissory Note due and payable, and then Borrower shall pay that amount. Lender may hire or pay someone else to help collect this Promissory Note if Borrower does not pay. Borrower also shall pay Lender reasonable costs of collection. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's reasonable legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post judgment collection services. If not prohibited by applicable law, Borrower also shall pay any court costs, in addition to all other sums provided by law. Notwithstanding anything to the contrary, Lender shall also have any and all remedies set forth under that certain accompanying Security Agreement dated of even date herewith. **This Promissory Note has been delivered to Lender and accepted by Lender in the State of West Virginia.**

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Promissory Note without losing them. Upon any change in the terms of this Promissory Note, and unless otherwise expressly stated in writing, no party who signs this Promissory Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability until the Obligation is paid in full. All such parties agree that Lender may release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone.

FISCAL YEAR FUNDING. The parties recognize and agree that borrower is a municipal corporation and political subdivision of the State of West Virginia that is not permitted to obligate funds not available during the current budget year, and that Borrower's obligations under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by Morgantown City Council or otherwise being available for this service. If funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on the last day of the fiscal year during which the agreement is executed. City agrees to use its best efforts to have the amounts contemplated under the agreement appropriated for the services provided in the agreement. Non-appropriation or non-funding shall not be considered an event of default.

PRIOR TO SIGNING THIS PROMISSORY NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS PROMISSORY NOTE. BORROWER AGREES TO THE TERMS OF THE PROMISSORY NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETE COPY OF THE PROMISSORY NOTE.

**THE CITY OF MORGANTOWN,
WEST VIRGINIA, a municipal corporation**

By: _____
_____ , _____

**GLENMARK HOLDING LIMITED LIABILITY
COMPANY, a West Virginia limited liability company**

By: _____
Mark J. Nesselroad, Member

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (“Agreement”) is made and entered into as of _____, 2022, by and between **The City of Morgantown, West Virginia**, a West Virginia municipal corporation, (hereinafter the “Grantor”), and **Glenmark Holding Limited Liability Company**, a West Virginia limited liability company (hereinafter the “Secured Party”).

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word “Collateral” as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement: (i) Action Target – Range Equipment & Bullet Proof Glass; (ii) MILO and Simulation Room Equipment; (iii) Acoustic Wall Outward-Facing Soundproofing Trade Fixtures; (iv) Vending Equipment; (v) Security Center Equipment and System; (vi) Classroom Furniture and Equipment; and (vii) Training Room Equipment and Shelving.

In addition, the word “Collateral” also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located: (i) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later; and (ii) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor ’s right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

Grantor hereby acknowledges that Grantor has an option to purchase specific items listed as the Collateral; however, this Agreement shall create a security interest in favor of Secured Party in the Collateral owned as of the effective date herein, as well as the Collateral in the event that Grantor exercises and purchases the Collateral under that certain option.

GRANTOR’S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Perfection of Security Interest. Grantor agrees to take whatever actions are reasonably requested by Lender to perfect and continue Lender’s security interest in the Collateral, so long as such actions are allowed under Grantor’s incorporation and organization. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting ownership of or title to the Collateral, and Grantor will note Lender’s interest upon any and all chattel paper if not delivered to Lender for possession by Lender.

No Violation. To the best of Grantor’s knowledge, the execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of organization or operating agreement do not prohibit any term or condition of this Agreement.

Location of the Collateral. Except in the ordinary course of Grantor’s business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at the real estate located at **1389 Earl**

Core Road, Morgantown, West Virginia 26505, or at such other locations that are acceptable to Lender.

Removal of the Collateral. Grantor shall not remove the Collateral from its existing location, 1389 Earl Core Road, Morgantown, West Virginia 26505, without Lender’s prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral without Lender’s prior written consent. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement.

Title. Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement and subject to such terms stated in the Bill of Sale and Promissory Note executed by and between the Parties with respect to the Collateral on or about the date of this Agreement. . Grantor shall defend Lender’s rights in the Collateral against the claims and demands of all other persons arising during the period of Grantor’s ownership.

Repairs and Maintenance. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender’s designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

Taxes, Assessments and Liens. Grantor will pay when due all taxes, assessments and liens upon the Collateral. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender’s interest in the Collateral is not jeopardized in Lender’s sole reasonable opinion. If the Collateral is subjected to a lien which is not discharged within thirty (30) days, Grantor shall, to the extent Grantor has funds available and allocated for such purpose, deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, and other charges that could accrue as a result of foreclosure or sale of the Collateral, which amount shall be reasonably agreed by the Parties. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender, upon request, with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender’s interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect,

applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion is not jeopardized.

Maintenance of Casualty Insurance. Grantor shall procure and maintain special form insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include a waiver of subrogation endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Collateral. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. So long as Grantor is not in breach of this Agreement, or the Lease, Promissory Note, or Bill of Sale executed by the Parties on or about the date of this Agreement, Lender will consent to repair or replacement of the damaged or destroyed Collateral, and Lender shall, upon satisfactory proof of cost estimate or expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to Grantor. Any such amount retained by Lender shall be promptly delivered to Grantor upon payment or release of the Indebtedness, or the portion thereof that it was retained to satisfy.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any material provision of this Agreement or any material provision of the Loan Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Loan Documents, Lender on Grantor's behalf may (but shall not be obligated to), after giving Grantor prior written notice and reasonable opportunity to take any action reasonably necessary to address the contents of the written notice, take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment

payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

- A. The failure to make prompt payment of any installment of principal or interest on the Note when due or payable.
- B. Should any representation or warranty made in the Loan Documents prove to be false or misleading in any material respect.
- C. The material breach of any covenant, condition, or agreement made by the Borrower under the Loan Documents.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the West Virginia Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Assemble Collateral. Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender, or at the Premises described in the Loan Documents, at Grantor's option. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender promptly returns them to Grantor after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of the Parties' rights and remedies, whether evidenced by this Agreement, the Loan Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by any Party to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of another Party under this Agreement, after the Party's failure to perform, shall not affect the other Party's right to declare a default and exercise its remedies.

LIMITATION ON RECOVERY. No provision of this Agreement shall permit, or be construed to permit, Lender to recover any amount in excess of the amount due to Lender under the Loan Documents from Grantor. Any amount delivered to or received by Lender in excess of such allowable recovery shall be promptly delivered to Grantor.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. To the extent that Grantor has funds available and allocated for such purpose, Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorney's fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the state of West Virginia. This Agreement has been accepted by Lender in the State of West Virginia.

No Waiver. Neither Party shall be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by the Party to be charged with such waiver. No delay or omission on the part of a Party in exercising any right shall operate as a waiver of such right or any other right. A waiver by a Party of a provision of this Agreement shall not prejudice or constitute a waiver of the Party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a Party, not any course of dealing between Lender and Grantor, shall constitute a waiver of any of the Party's rights or of any of the

other Party's obligations as to any future transactions. Whenever the consent of a Party is required under this Agreement, the granting of such consent by the Party in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the reasonable discretion of the Party.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. To the extent Grantor's funds are available and allocated for such purpose, Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstances, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstances. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreement made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full or otherwise released, at which point all such agreements, representations, warranties, and obligations of Grantor under this Agreement shall automatically terminate.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms, and certain words used in a general reference being uncapitalized, shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word “Agreement” means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

Chattel Paper. The words “Chattel Paper” shall mean chattel paper, including electronic chattel paper, as defined in the Uniform Commercial Code and shall include, without limitation, a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods;

Default. The word “Default” means an Event of Default set forth in this Agreement in the section titled “Default”.

Environmental Laws. The words “Environmental Laws” mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (“CERCLA”), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (“SARA”), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words “Event of Default” mean any of the events of default set forth in this Agreement in the default section of this Agreement.

General Intangibles. The words “General Intangibles” shall mean general intangibles as defined in the Uniform Commercial Code and shall include, without limitation, any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals before extraction.

Grantor. The word “Grantor” means The City of Morgantown, West Virginia, a West Virginia municipal corporation. .

Indebtedness. The word “Indebtedness” means the indebtedness evidenced by the Note or Loan Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Loan Documents.

Instruments. The word “Instruments” shall mean instruments as defined in the Uniform Commercial Code and shall include, without limitation, a negotiable instrument or any other

writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment and any certificates of deposit now or hereafter purchased by Grantor.

Loan Documents. The words “Loan Documents” mean the this Agreement, the Bill of Sale, and the Promissory Note, all between the parties and related to the transaction contemplated therein.

Lender. The word “Lender” means Glenmark Holding Limited Liability Company, a West Virginia limited liability company, its successors and assigns.

Note. The word “Note” means that Promissory Note dated of even date herewith executed by Borrower in favor of Lender in the principal amount of \$1,500,000.00, as well as any substitute, replacement or refinancing note or notes therefor.

Property. The word “Property” means all of Grantor’s right, title and interest in and to all the personal property as described in the “Collateral Description” section of this Agreement.

Uniform Commercial Code. The words "Uniform Commercial Code" means the Uniform Commercial Code now or hereafter in effect in the State of West Virginia, except to the extent the Uniform Commercial Code of another state shall take precedence.

FISCAL YEAR FUNDING. The parties recognize and agree that Grantor is a municipal corporation and political subdivision of the State of West Virginia that is not permitted to obligate funds not available during the current budget year, and that Grantor’s obligations under the Agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by Morgantown City Council or otherwise being available for this service. If funds are not appropriated or otherwise available for this service, the Agreement shall terminate without penalty on the last day of the fiscal year during which the Agreement is executed. City agrees to use its best efforts to have the amounts contemplated under the Agreement appropriated for the services provided in the agreement. Non-appropriation or non-funding shall not be considered an event of default.

[Remainder of Page Intentionally Blank – Signature Page Follows]

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREE TO ITS TERMS.

WITNESS the following signatures and seals:

THE CITY OF MORGANTOWN, WEST VIRGINIA, a West Virginia municipal corporation

By: _____
_____, its _____

A RESOLUTION OF THE CITY OF MORGANTOWN TO ACHIEVE GREENHOUSE GAS REDUCTIONS IN SUPPORT OF THE PARIS CLIMATE AGREEMENT

WHEREAS, the City of Morgantown has taken numerous steps to reduce emissions of greenhouse gases including adoption of several energy efficiency measures, installation of solar panels on the Morgantown Market Place, and completion of a greenhouse gas inventory; and

WHEREAS, the world's leading climate scientists agree that climate change caused by emissions of greenhouse gases from human activities is among the most significant problems facing the world today; and

WHEREAS, documented impacts of climate change include but are not limited to increased occurrences of extreme weather events (e.g. droughts, wildfires, and floods), adverse impacts on ecosystems, demographic patterns, and economic value chains; and

WHEREAS, responding to climate change will help maintain Morgantown's reputation as a science-based university community while avoiding significant adverse impacts to human rights and human health; and

WHEREAS, the Paris Agreement resulted in voluntary commitments from almost every nation to take action and enact programs to limit global temperature increases to less than 2 degrees Celsius, with an expectation that this goal would be reduced to 1.5 degrees Celsius in the future; and

WHEREAS, a resolution adopted by the City Council on August 2, 2017, pledged the City of Morgantown to meet the goals of the National Mayors Climate Action Agenda to reduce greenhouse gas emissions commensurate with the goals of the Paris Climate Agreement and the US contribution of a 28 % reduction by 2026; and

WHEREAS, the City of Morgantown has already achieved significant reductions in greenhouse gas emissions from municipal facilities; and

WHEREAS, President Biden has established the further goal of a 50-52 % reduction in greenhouse gas emissions below 2005 levels by 2030; and

WHEREAS, significant federal funding has become available for municipalities through the 2022 Inflation Reduction Act;

Now, therefore, **BE IT RESOLVED** that the City of Morgantown, WV:

- 1) Renews its commitment to meeting the goal of a 28 % reduction in greenhouse gas emissions by municipal facilities by 2025; and
- 2) Pledges to pursue the goal of a 52 % reduction in greenhouse gas emission by 2030 through implementation of a Climate Action Plan; and
- 3) Directs the City Manager to explore potential benefits and costs of adopting cost-effective policies and programs that promote the long-term goal of GHG emissions reduction while maximizing economic and social co-benefits of such action; and

BE IT FURTHER RESOLVED, that the City of Morgantown encourages other commercial,

residential and public sectors to seek reductions in greenhouse gas emissions.

Adopted this __ day of December, 2022:

Mayor

City Clerk

The City of Morgantown
 Combined Utility System Revenue Bonds, Series 2010 C
 (West Virginia SRF Program)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 C (WEST VIRGINIA SRF PROGRAM) TO PERMIT THE FUNDING OF THE SERIES 2010 C BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2010 C BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2010 C BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on September 1, 2009, as amended and modified by a Supplemental Resolution, duly and officially adopted on January 5, 2010 (collectively, the "Bond Ordinance"), which provided for the issuance of The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 C (West Virginia SRF Program) (the "Series 2010 C Bonds");

WHEREAS, the Bond Ordinance provides for a reserve account (the "Series 2010 C Bonds Reserve Account") held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2010 C Bonds. The Bond Ordinance provided that the Series 2010 C Bonds Reserve Account was to be fully funded with proceeds of the Series 2010 C Bonds upon the issuance thereof in the amount of \$934,937 (the "Series 2010 C Bonds Reserve Requirement"). The Series 2010 C Bonds Reserve Account was funded in the amount of \$935,808.94 as of June 30, 2022.

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2010 C Bonds Reserve Account a municipal bond debt service reserve insurance policy (a "Debt Service Reserve Insurance Policy"), or

surety bond, letter of credit or similar financial instrument (each known as a “Reserve Account Credit Facility”), in an amount either equal to, or lesser than, the Series 2010 C Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2010 C Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2010 C Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2010 C Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2010 C Bonds, as well as the Series 2010 D Bonds, Series 2012 A Bonds, Series 2013 A Bonds, Series 2015 A Bonds, Series 2015 C Bonds, Series 2015 D Bonds and Series 2019 B Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2010 C Bonds Debt Service Reserve Account in an amount equal to the Series 2010 C Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2010 C Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2010 C Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2010 C Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2010 C Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2010 C Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2010 C Bonds, cause to be deposited with the Commission and pledged to the Series 2010 C Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2010 C Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2010 C Bonds. In the event the Series 2010 C Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2010 C Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2010 C Bonds Reserve Account and any monies then on deposit in the Series 2010 C Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term "Reserve Account Credit Facility" shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2010 C Bonds Reserve Account.

(1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2010 C Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder) (i) on any date on which moneys are required to be withdrawn from the Series 2010 C Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2010 C Bonds when needed to pay debt service on such Bonds or (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 C Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months

prior to any stated expiration date of such Reserve Account Credit Facility for any Reserve Account Credit Facility that is not conterminous with the final maturity date of the Series 2010 C Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2010 C Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2010 C Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2010 C Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2010 C Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2010 C Bonds Reserve Account to the Series 2010 C Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond

Ordinance the Issuer agrees to comply, and hereby authorizes and instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the “Reserve Policy”) and pay all related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2010 C Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2010 C Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2010 C Bonds Sinking Fund for payment of the debt service on the Series 2010 C Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2010 C Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made

on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the Series 2010 C Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2010 C Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2010 C Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2010 C Bonds (collectively, the “Security Documents”).

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer’s obligation to pay such amount shall expressly survive payment in full of the Series 2010 C Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service

requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2010 C Bonds and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2010 C Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2010 C Bonds shall not discharge the obligation of the Issuer with respect to such Series 2010 C Bonds, and BAM shall become the owner of such unpaid Series 2010 C Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2010 C Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect

to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2010 C Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity bonds) in all revenues and collateral pledged as security for the Series 2010 C Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Series 2010 C Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer's Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the "Series 2020 A Bonds") even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2010 C Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2010 C Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
 200 Liberty Street, 27th Floor
 New York, NY 10281
 Attention: Surveillance, Re: Policy No. _____
 Telephone: (212) 235-2500
 Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize

the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2010 C Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2010 C Bonds Reserve Account; and (iii) the payment by the Board of all costs associated with actions authorized in this Supplemental Resolution, specifically including, but not limited to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2010 C Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

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Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)

The City of Morgantown
 Combined Utility System Revenue Bonds, Series 2010 D
 (West Virginia DWTRF Program)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2010 D (WEST VIRGINIA DWTRF PROGRAM) TO PERMIT THE FUNDING OF THE SERIES 2010 D BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2010 D BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2010 D BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on September 1, 2009, as amended and modified by a Supplemental Resolution, duly and officially adopted on January 5, 2010 (collectively, the "Bond Ordinance"), which provided for the issuance of The City of Morgantown Combined Utility System Revenue Bonds, Series 2010 D (West Virginia DWTRF Program) (the "Series 2010 D Bonds");

WHEREAS, the Bond Ordinance provides for a reserve account (the "Series 2010 D Bonds Reserve Account") held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2010 D Bonds. The Bond Ordinance provided that the Series 2010 D Bonds Reserve Account was to be fully funded with proceeds of the Series 2010 D Bonds upon the issuance thereof in the amount of \$566,383.00 (the "Series 2010 D Bonds Reserve Requirement"). The Series 2010 D Bonds Reserve Account was funded in the amount of \$667,135.55 as of June 30, 2022;

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2010 D Bonds Reserve Account a municipal bond debt service reserve insurance policy (a "Debt Service Reserve Insurance Policy"), or surety bond, letter of credit or similar financial instrument (each known as a "Reserve Account Credit Facility"), in an amount either equal to, or lesser than, the Series 2010 D Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2010 D Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2010 D Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2010 D Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2010 D Bonds, as well as the Series 2010 C Bonds, Series 2012 A Bonds, Series 2013 A Bonds, Series 2015 A Bonds, Series 2015 C Bonds, Series 2015 D Bonds and Series 2019 B Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2010 D Bonds Debt Service Reserve Account in an amount equal to the Series 2010 D Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2010 D Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2010 D Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2010 D Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2010 D Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2010 D Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2010 D Bonds, cause to be deposited with the Commission and pledged to the Series 2010 D Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2010 D Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2010 D Bonds. In the event the Series 2010 D Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2010 D Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2010 D Bonds Reserve Account and any monies then on deposit in the Series 2010 D Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term "Reserve Account Credit Facility" shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2010 D Bonds Reserve Account.

(1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2010 D Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder) (i) on any date on which moneys are required to be withdrawn from the Series 2010 D Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2010 D Bonds when needed to pay debt service on such Bonds or (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 D Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months prior to any stated expiration date of such Reserve Account Credit Facility for any Reserve Account Credit Facility that is not coterminous

with the final maturity date of the Series 2010 D Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2010 D Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2010 D Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2010 D Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2010 D Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2010 D Bonds Reserve Account to the Series 2010 D Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond Ordinance the Issuer agrees to comply, and hereby authorizes and instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the “Reserve Policy”) and pay all related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2010 D Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2010 D Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2010 D Bonds Sinking Fund for payment of the debt service on the Series 2010 D Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2010 D Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the Series 2010 D Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account

Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2010 D Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2010 D Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2010 D Bonds (collectively, the “Security Documents”).

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer’s obligation to pay such amount shall expressly survive payment in full of the Series 2010 D Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a)

hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2010 D Bonds and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2010 D Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2010 D Bonds shall not discharge the obligation of the Issuer with respect to such Series 2010 D Bonds, and BAM shall become the owner of such unpaid Series 2010 D Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2010 D Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2010 D Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity bonds) in all revenues and collateral pledged as security for the Series 2010 D Bonds. Policy Costs shall be paid to the Reserve Insurer

immediately following the payment of principal of and interest on the Series 2010 D Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer's Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the "Series 2020 A Bonds") even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2010 D Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2010 D Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
 200 Liberty Street, 27th Floor
 New York, NY 10281
 Attention: Surveillance, Re: Policy No. _____
 Telephone: (212) 235-2500
 Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2010 D Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2010 D Bonds Reserve Account; and (iii) the payment by the Board of all costs associated with actions authorized in this Supplemental Resolution, specifically including, but not limited

to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2010 D Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

[Remainder of Page Intentionally Blank]

Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)

The City of Morgantown
 Combined Utility System Revenue Bonds, Series 2012 A
 (West Virginia DWTRF Program)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A (WEST VIRGINIA DWTRF PROGRAM) TO PERMIT THE FUNDING OF THE SERIES 2012 A BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2012 A BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2012 A BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on January 3, 2012, as amended and modified by a Supplemental Resolution, duly and officially adopted on August 24, 2012 (collectively, the "Bond Ordinance"), which provided for the issuance of The City of Morgantown Combined Utility System Revenue Bonds, Series 2012 A (West Virginia DWTRF Program) (the "Series 2012 A Bonds");

WHEREAS, the Bond Ordinance provides for a reserve account (the "Series 2012 A Bonds Reserve Account") held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2012 A Bonds. The Bond Ordinance provided that the Series 2012 A Bonds Reserve Account was to be funded by quarterly payments of \$511.83 to reach a total amount of \$20,473.00 (the "Series 2012 A Bonds Reserve Requirement"). The Series 2012 A Bonds Reserve Account was funded in the amount of \$20,495.29 as of June 30, 2022;

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2012 A Bonds Reserve Account a municipal bond debt service reserve insurance policy (a "Debt Service Reserve Insurance Policy"), or surety bond, letter of credit or similar financial instrument (each known as a "Reserve Account Credit Facility"), in an amount either equal to, or lesser than, the Series 2012 A Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2012 A Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2012 A Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2012 A Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2012 A Bonds, as well as the Series 2010 C Bonds, Series 2010 D Bonds, Series 2013 A Bonds, Series 2015 A Bonds, Series 2015 C Bonds, Series 2015 D Bonds and Series 2019 B Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2012 A Bonds Debt Service Reserve Account in an amount equal to the Series 2012 A Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2012 A Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2012 A Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2012 A Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2012 A Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2012 A Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2012 A Bonds, cause to be deposited with the Commission and pledged to the Series 2012 A Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2012 A Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2012 A Bonds. In the event the Series 2012 A Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2012 A Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2012 A Bonds Reserve Account and any monies then on deposit in the Series 2012 A Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term "Reserve Account Credit Facility" shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2012 A Bonds Reserve Account.

(1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2012 A Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder) (i) on any date on which moneys are required to be withdrawn from the Series 2012 A Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2012 A Bonds when needed to pay debt service on such Bonds or (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 D Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months prior to any stated expiration date of such Reserve Account Credit Facility for any Reserve Account Credit Facility that is not coterminous with the final maturity date of the Series 2012 A Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver

an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2012 A Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2012 A Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2012 A Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2012 A Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2012 A Bonds Reserve Account to the Series 2012 A Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond Ordinance the Issuer agrees to comply, and hereby authorizes and instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the "Reserve Policy") and pay all

related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2012 A Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2012 A Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2012 A Bonds Sinking Fund for payment of the debt service on the Series 2012 A Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2012 A Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the Series 2012 A Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for

disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2012 A Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2012 A Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2012 A Bonds (collectively, the "Security Documents").

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer's obligation to pay such amount shall expressly survive payment in full of the Series 2012 A Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2012 A Bonds

and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2012 A Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2012 A Bonds shall not discharge the obligation of the Issuer with respect to such Series 2012 A Bonds, and BAM shall become the owner of such unpaid Series 2012 A Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2012 A Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2012 A Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity bonds) in all revenues and collateral pledged as security for the Series 2012 A Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Series 2012 A Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer's Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the "Series 2020 A Bonds") even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2012 A Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2012 A Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
 200 Liberty Street, 27th Floor
 New York, NY 10281
 Attention: Surveillance, Re: Policy No. _____
 Telephone: (212) 235-2500
 Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2012 A Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2012 A Bonds Reserve Account; and (iii) the payment by the Board of all costs associated with actions authorized in this Supplemental Resolution, specifically including, but not limited to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2012 A Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

[Remainder of Page Intentionally Blank]

Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)

The City of Morgantown
 Combined Utility System Revenue Bonds, Series 2013 A
 (West Virginia Infrastructure Fund)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2013 A (WEST VIRGINIA INFRASTRUCTURE FUND) TO PERMIT THE FUNDING OF THE SERIES 2013 A BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2013 A BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2013 A BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on July 5, 2011, as amended and modified by a Supplemental Resolution, duly and officially adopted on August 13, 2013 (collectively, the "Bond Ordinance"), which provided for the assumption and redesignation of the Canyon Public Service District, Sewer Revenue Bonds, Series 2008 A (West Virginia Infrastructure Fund) (the "District Bonds") to The City of Morgantown Combined Utility System Revenue Bonds, Series 2013 A (West Virginia Infrastructure Fund) (the "Series 2013 A Bonds");

WHEREAS, the Bond Ordinance provided that the District Bonds reserve account was to be assumed by the Issuer and was renamed The City of Morgantown, Series 2013 A Bonds Reserve Account. The Bond Ordinance provides for a reserve account (the "Series 2013 A Bonds Reserve Account") held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2013 A Bonds and the District Bonds. The Series 2013 A Bonds Reserve Account was fully funded upon assumption in the amount of \$131,580.00 (the "Series 2013 A Bonds Reserve Requirement"). The Series 2013 A Bonds Reserve Account was funded in the amount of \$135,179.03 as of June 30, 2022;

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2013 A Bonds Reserve Account a

municipal bond debt service reserve insurance policy (a “Debt Service Reserve Insurance Policy”), or surety bond, letter of credit or similar financial instrument (each known as a “Reserve Account Credit Facility”), in an amount either equal to, or lesser than, the Series 2013 A Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2013 A Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2013 A Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2013 A Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2013 A Bonds, as well as the Series 2010 C Bonds, Series 2010 D Bonds, Series 2012 A Bonds, Series 2015 A Bonds, Series 2015 C Bonds, Series 2015 D Bonds and Series 2019 B Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2013 A Bonds Debt Service Reserve Account in an amount equal to the Series 2013 A Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2013 A Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2013 A Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2013 A Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2013 A Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2013 A Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2013 A Bonds, cause to be deposited with the Commission and pledged to the Series 2013 A Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2013 A Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2013 A Bonds. In the event the Series 2013 A Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2013 A Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2013 A Bonds Reserve Account and any monies then on deposit in the Series 2013 A Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term “Reserve Account Credit Facility” shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2013 A Bonds Reserve Account.

(1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2013 A Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder) (i) on any date on which moneys are required to be withdrawn from the Series 2013 A Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2013 A Bonds when needed to pay debt service on such Bonds or (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 D Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months prior to any stated expiration date of such Reserve Account Credit

Facility for any Reserve Account Credit Facility that is not conterminous with the final maturity date of the Series 2013 A Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2013 A Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2013 A Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2013 A Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2013 A Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2013 A Bonds Reserve Account to the Series 2013 A Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond Ordinance the Issuer agrees to comply, and hereby authorizes and

instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the “Reserve Policy”) and pay all related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2013 A Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2013 A Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2013 A Bonds Sinking Fund for payment of the debt service on the Series 2013 A Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2013 A Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the

Series 2013 A Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2013 A Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2013 A Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2013 A Bonds (collectively, the “Security Documents”).

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer’s obligation to pay such amount shall expressly survive payment in full of the Series 2013 A Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2013 A Bonds and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2013 A Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2013 A Bonds shall not discharge the obligation of the Issuer with respect to such Series 2013 A Bonds, and BAM shall become the owner of such unpaid Series 2013 A Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2013 A Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2013 A Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity

bonds) in all revenues and collateral pledged as security for the Series 2013 A Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Series 2013 A Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer's Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the "Series 2020 A Bonds") even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2013 A Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2013 A Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
 200 Liberty Street, 27th Floor
 New York, NY 10281
 Attention: Surveillance, Re: Policy No. _____
 Telephone: (212) 235-2500
 Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2013 A Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2013 A Bonds Reserve Account; and (iii) the payment by the Board of all costs

associated with actions authorized in this Supplemental Resolution, specifically including, but not limited to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2013 A Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

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Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)

The City of Morgantown
Combined Utility System Revenue Bonds, Series 2015 A
(West Virginia SRF Program)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA SRF PROGRAM) TO PERMIT THE FUNDING OF THE SERIES 2015 A BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2015 A BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2015 A BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on July 16, 2013, as amended and modified by a Supplemental Resolution, duly and officially adopted on March 17, 2015 (collectively, the "Bond Ordinance"), which provided for the assumption and redesignation of the Scotts Run Public Service District, Sewer Revenue Bonds Series 1991 A (the "District Bonds") to The City of Morgantown Combined Utility System Revenue Bonds, Series 2015 A (West Virginia SRF Program) (the "Series 2015 A Bonds");

WHEREAS, the Bond Ordinance provided that the District Bonds reserve account was to be assumed by the Issuer upon closing was renamed The City of Morgantown, Series 2015 A Bonds Reserve Account (the "Series 2015 A Bonds Reserve Account"). The Bond Ordinance provides for the Series 2015 A Bonds Reserve Account held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2015 A Bonds and the District Bonds. The Series 2015 A Bonds Reserve Account was fully funded upon assumption in the amount of \$11,276.00 (the "Series 2015 A Bonds Reserve Requirement"). The Series 2015 A Bonds Reserve Account was funded in the amount of \$11,288.24 as of June 30, 2022;

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2015 A Bonds Reserve Account a

municipal bond debt service reserve insurance policy (a “Debt Service Reserve Insurance Policy”), or surety bond, letter of credit or similar financial instrument (each known as a “Reserve Account Credit Facility”), in an amount either equal to, or lesser than, the Series 2015 A Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2015 A Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2015 A Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2015 A Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2015 A Bonds, as well as the Series 2010 C Bonds, Series 2010 D Bonds, Series 2012 A Bonds, Series 2013 A Bonds, Series 2015 C Bonds, Series 2015 D Bonds and Series 2019 B Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2015 A Bonds Debt Service Reserve Account in an amount equal to the Series 2015 A Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2015 A Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2015 A Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2015 A Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2015 A Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2015 A Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2015 A Bonds, cause to be deposited with the Commission and pledged to the Series 2015 A Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2015 A Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2015 A Bonds. In the event the Series 2015 A Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2015 A Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2015 A Bonds Reserve Account and any monies then on deposit in the Series 2015 A Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term “Reserve Account Credit Facility” shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2015 A Bonds Reserve Account.

- (1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2015 A Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder)
 - (i) on any date on which moneys are required to be withdrawn from the Series 2015 A Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2015 A Bonds when needed to pay debt service on such Bonds or
 - (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 D Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months prior to any stated expiration date of such Reserve Account Credit

Facility for any Reserve Account Credit Facility that is not conterminous with the final maturity date of the Series 2015 A Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2015 A Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2015 A Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2015 A Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2015 A Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2015 A Bonds Reserve Account to the Series 2015 A Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond Ordinance the Issuer agrees to comply, and hereby authorizes and

instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the “Reserve Policy”) and pay all related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2015 A Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2015 A Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2015 A Bonds Sinking Fund for payment of the debt service on the Series 2015 A Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2015 A Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the

Series 2015 A Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2015 A Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2015 A Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2015 A Bonds (collectively, the “Security Documents”).

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer’s obligation to pay such amount shall expressly survive payment in full of the Series 2015 A Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2015 A Bonds and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2015 A Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2015 A Bonds shall not discharge the obligation of the Issuer with respect to such Series 2015 A Bonds, and BAM shall become the owner of such unpaid Series 2015 A Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2015 A Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2015 A Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity

bonds) in all revenues and collateral pledged as security for the Series 2015 A Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Series 2015 A Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer’s Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the “Series 2020 A Bonds”) even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2015 A Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2015 A Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
200 Liberty Street, 27th Floor
New York, NY 10281
Attention: Surveillance, Re: Policy No. _____
Telephone: (212) 235-2500
Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2015 A Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2015 A Bonds Reserve Account; and (iii) the payment by the Board of all costs

associated with actions authorized in this Supplemental Resolution, specifically including, but not limited to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2015 A Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

[Remainder of Page Intentionally Blank]

Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)

The City of Morgantown
 Combined Utility System Revenue Bonds, Series 2015 C
 (West Virginia SRF Program)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 C (WEST VIRGINIA SRF PROGRAM) TO PERMIT THE FUNDING OF THE SERIES 2015 C BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2015 C BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2015 C BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on July 16, 2013, as amended and modified by a Supplemental Resolution, duly and officially adopted on March 17, 2015 (collectively, the "Bond Ordinance"), which provided for the assumption and redesignation of the Scotts Run Public Service District, Sewer Revenue Bonds Series 2003 A (the "District Bonds") to The City of Morgantown Combined Utility System Revenue Bonds, Series 2015 C (West Virginia SRF Program) (the "Series 2015 C Bonds");

WHEREAS, the Bond Ordinance provided that the District Bonds reserve account was to be assumed by the Issuer upon closing and was renamed The City of Morgantown, Series 2015 C Bonds Reserve Account (the "Series 2015 C Bonds Reserve Account"). The Bond Ordinance provides for the Series 2015 C Bonds Reserve Account held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2015 C Bonds and the District Bonds. The Series 2015 C Bonds Reserve Account was fully funded upon assumption in the amount of \$213,468.00 (the "Series 2015 C Bonds Reserve Requirement"). The Series 2015 C Bonds Reserve Account was funded in the amount of \$223,151.63 as of June 30, 2022;

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2015 C Bonds Reserve Account a

municipal bond debt service reserve insurance policy (a “Debt Service Reserve Insurance Policy”), or surety bond, letter of credit or similar financial instrument (each known as a “Reserve Account Credit Facility”), in an amount either equal to, or lesser than, the Series 2015 C Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2015 C Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2015 C Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2015 C Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2015 C Bonds, as well as the Series 2010 C Bonds, Series 2010 D Bonds, Series 2012 A Bonds, Series 2013 A Bonds, Series 2015 A Bonds, Series 2015 D Bonds and Series 2019 B Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2015 C Bonds Debt Service Reserve Account in an amount equal to the Series 2015 C Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2015 C Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2015 C Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2015 C Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2015 C Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2015 C Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2015 C Bonds, cause to be deposited with the Commission and pledged to the Series 2015 C Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2015 C Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2015 C Bonds. In the event the Series 2015 C Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2015 C Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2015 C Bonds Reserve Account and any monies then on deposit in the Series 2015 C Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term "Reserve Account Credit Facility" shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2015 C Bonds Reserve Account.

(1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2015 C Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder) (i) on any date on which moneys are required to be withdrawn from the Series 2015 C Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2015 C Bonds when needed to pay debt service on such Bonds or (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 D Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months prior to any stated expiration date of such Reserve Account Credit

Facility for any Reserve Account Credit Facility that is not conterminous with the final maturity date of the Series 2015 C Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2015 C Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2015 C Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2015 C Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2015 C Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2015 C Bonds Reserve Account to the Series 2015 C Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond Ordinance the Issuer agrees to comply, and hereby authorizes and

instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the “Reserve Policy”) and pay all related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2015 C Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2015 C Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2015 C Bonds Sinking Fund for payment of the debt service on the Series 2015 C Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2015 C Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the

Series 2015 C Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2015 C Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2015 C Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2015 C Bonds (collectively, the “Security Documents”).

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer’s obligation to pay such amount shall expressly survive payment in full of the Series 2015 C Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2015 C Bonds and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2015 C Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2015 C Bonds shall not discharge the obligation of the Issuer with respect to such Series 2015 C Bonds, and BAM shall become the owner of such unpaid Series 2015 C Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2015 C Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2015 C Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity

bonds) in all revenues and collateral pledged as security for the Series 2015 C Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Series 2015 C Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer's Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the "Series 2020 A Bonds") even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2015 C Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2015 C Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
200 Liberty Street, 27th Floor
New York, NY 10281
Attention: Surveillance, Re: Policy No. _____
Telephone: (212) 235-2500
Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2015 C Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2015 C Bonds Reserve Account; and (iii) the payment by the Board of all costs

associated with actions authorized in this Supplemental Resolution, specifically including, but not limited to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2015 C Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

[Remainder of Page Intentionally Blank]

Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)

The City of Morgantown
 Combined Utility System Revenue Bonds, Series 2015 D
 (West Virginia SRF Program)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2015 D (WEST VIRGINIA SRF PROGRAM) TO PERMIT THE FUNDING OF THE SERIES 2015 D BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2015 D BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2015 D BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on July 16, 2013, as amended and modified by a Supplemental Resolution, duly and officially adopted on March 17, 2015 (collectively, the "Bond Ordinance"), which provided for the assumption and redesignation of the Scotts Run Public Service District, Sewer Revenue Bonds Series 2009 A (the "District Bonds") to The City of Morgantown Combined Utility System Revenue Bonds, Series 2015 D (West Virginia SRF Program) (the "Series 2015 D Bonds");

WHEREAS, the Bond Ordinance provided that the District Bonds reserve account was assumed by the Issuer upon closing and was renamed The City of Morgantown, Series 2015 D Bonds Reserve Account (the "Series 2015 D Bonds Reserve Account"). The Bond Ordinance provides for the Series 2015 D Bonds Reserve Account held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2015 D Bonds and the District Bonds. The Series 2015 D Bonds Reserve Account is fully funded in the amount of \$44,144.00 (the "Series 2015 D Bonds Reserve Requirement"). The Series 2015 D Bonds Reserve Account was funded in the amount of \$44,189.27 as of June 30, 2022;

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2015 D Bonds Reserve Account a

municipal bond debt service reserve insurance policy (a “Debt Service Reserve Insurance Policy”), or surety bond, letter of credit or similar financial instrument (each known as a “Reserve Account Credit Facility”), in an amount either equal to, or lesser than, the Series 2015 D Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2015 D Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2015 D Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2015 D Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2015 D Bonds, as well as the Series 2010 C Bonds, Series 2010 D Bonds, Series 2012 A Bonds, Series 2013 A Bonds, Series 2015 A Bonds, Series 2015 C Bonds and Series 2019 B Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2015 D Bonds Debt Service Reserve Account in an amount equal to the Series 2015 D Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2015 D Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2015 D Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2015 D Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2015 D Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2015 D Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2015 D Bonds, cause to be deposited with the Commission and pledged to the Series 2015 D Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2015 D Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2015 D Bonds. In the event the Series 2015 D Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2015 D Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2015 D Bonds Reserve Account and any monies then on deposit in the Series 2015 D Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term “Reserve Account Credit Facility” shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2015 D Bonds Reserve Account.

(1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2015 D Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder) (i) on any date on which moneys are required to be withdrawn from the Series 2015 D Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2015 D Bonds when needed to pay debt service on such Bonds or (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 D Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months prior to any stated expiration date of such Reserve Account Credit

Facility for any Reserve Account Credit Facility that is not conterminous with the final maturity date of the Series 2015 D Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2015 D Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2015 D Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2015 D Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2015 D Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2015 D Bonds Reserve Account to the Series 2015 D Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond Ordinance the Issuer agrees to comply, and hereby authorizes and

instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the “Reserve Policy”) and pay all related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2015 D Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2015 D Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2015 D Bonds Sinking Fund for payment of the debt service on the Series 2015 D Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2015 D Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the

Series 2015 D Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2015 D Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2015 D Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2015 D Bonds (collectively, the “Security Documents”).

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer’s obligation to pay such amount shall expressly survive payment in full of the Series 2015 D Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2015 D Bonds and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2015 D Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2015 D Bonds shall not discharge the obligation of the Issuer with respect to such Series 2015 D Bonds, and BAM shall become the owner of such unpaid Series 2015 D Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2015 D Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2015 D Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity

bonds) in all revenues and collateral pledged as security for the Series 2015 D Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Series 2015 D Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer's Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the "Series 2020 A Bonds") even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2015 D Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2015 D Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
 200 Liberty Street, 27th Floor
 New York, NY 10281
 Attention: Surveillance, Re: Policy No. _____
 Telephone: (212) 235-2500
 Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2015 D Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2015 D Bonds Reserve Account; and (iii) the payment by the Board of all costs

associated with actions authorized in this Supplemental Resolution, specifically including, but not limited to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2015 D Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

[Remainder of Page Intentionally Blank]

Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)

The City of Morgantown
 Combined Utility System Revenue Bonds, Series 2019 B
 (West Virginia DWTRF Program)

SECOND SUPPLEMENTAL RESOLUTION

SECOND SUPPLEMENTAL RESOLUTION AUTHORIZING AND APPROVING THE AMENDMENT AND MODIFICATION OF THE BOND ORDINANCE OF THE CITY OF MORGANTOWN WHICH AUTHORIZED AND DIRECTED THE ISSUANCE OF THE CITY OF MORGANTOWN COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2019 B (WEST VIRGINIA DWTRF PROGRAM) TO PERMIT THE FUNDING OF THE SERIES 2019 B BONDS RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY OR OTHER CREDIT FACILITY; PROVIDING FOR THE WITHDRAWAL OF MONIES CURRENTLY DEPOSITED IN THE SERIES 2019 B BONDS RESERVE ACCOUNT UPON THE SATISFACTION OF SUCH RESERVE ACCOUNT THROUGH A MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE POLICY AND THE USE OF SUCH MONIES FOR CAPITAL IMPROVEMENTS FOR THE SYSTEM; APPROVING THE MUNICIPAL BOND DEBT SERVICE RESERVE INSURANCE COMMITMENT AND DEBT SERVICE RESERVE AGREEMENT FROM BUILD AMERICA MUTUAL ASSURANCE COMPANY FOR THE SERIES 2019 B BONDS RESERVE ACCOUNT; AND PROVIDING FOR THE TAKING OF ALL ACTIONS RELATED THERETO.

WHEREAS, the Council (the "Governing Body") of The City of Morgantown (the "Issuer") has duly and officially enacted a Bond Ordinance on May 7, 2019, as amended and modified by a Supplemental Resolution, duly and officially adopted on October 15, 2019 (collectively, the "Bond Ordinance"), which provided for the assumption and redesignation of the River Road Public Service District, Water Revenue Bonds Series 2016 A (the "District Bonds") to The City of Morgantown Combined Utility System Revenue Bonds, Series 2019 B (West Virginia DWTRF Program) (the "Series 2019 B Bonds");

WHEREAS, the Bond Ordinance provided that the District Bonds reserve account was assumed by the Issuer upon closing and was renamed The City of Morgantown, Series 2019 B Bonds Reserve Account (the "Series 2019 B Bonds Reserve Account"). The Bond Ordinance provides for the Series 2019 B Bonds Reserve Account held by the West Virginia Municipal Bond Commission (the "Bond Commission") to secure the payment of the principal of, and interest on, the Series 2019 B Bonds and the District Bonds. The Series 2019 B Bonds Reserve Account was fully funded upon assumption in the amount of \$91,445.00 (the "Series 2019 B Bonds Reserve Requirement"). The Series 2019 B Bonds Reserve Account was funded in the amount of \$95,407.99 as of June 30, 2022;

WHEREAS, the Bond Ordinance is either silent or provides an insufficient framework as to the authority of the Issuer to subsequently pledge to the Series 2019 B Bonds Reserve Account a

municipal bond debt service reserve insurance policy (a “Debt Service Reserve Insurance Policy”), or surety bond, letter of credit or similar financial instrument (each known as a “Reserve Account Credit Facility”), in an amount either equal to, or lesser than, the Series 2019 B Bonds Reserve Requirement;

WHEREAS, the Issuer has been advised, and does hereby determine, that pledging a Debt Service Reserve Insurance Policy to the Series 2019 B Bonds Reserve Account (i) is a more financially advantageous method to satisfy the Series 2019 B Bonds Reserve Requirement; and (ii) will allow the monies currently on deposit in the Series 2019 B Bonds Reserve Account which remain after the payment of the cost of purchasing such Debt Service Reserve Insurance Policy and paying any expenses related thereto, to be used for the design, acquisition, construction and equipping of capital additions, betterments and improvements for the combined waterworks, sewerage and stormwater system of the Issuer (the “System”);

WHEREAS, Build America Mutual Assurance Company (“BAM”) has agreed to provide to the Issuer a Municipal Bond Debt Service Reserve Insurance Commitment for the Series 2019 B Bonds, as well as the Series 2010 C Bonds, Series 2010 D Bonds, Series 2012 A Bonds, Series 2013 A Bonds, Series 2015 A Bonds, Series 2015 C Bonds and Series 2015 D Bonds as defined in the hereafter described Debt Service Reserve Agreement (collectively, the “Additional Insured Parity Bonds”), substantially in the form attached hereto as “Exhibit A” and incorporated herein by reference (the “Debt Service Reserve Insurance Commitment”), whereby BAM agrees, subject to certain conditions, to provide a Municipal Bond Debt Service Reserve Insurance Policy to fund the Series 2019 B Bonds Debt Service Reserve Account in an amount equal to the Series 2019 B Bonds Reserve Requirement and to fund the respective Reserve Accounts for the Additional Insured Parity Bonds (the Series 2019 B Bonds Debt Service Reserve Account and the respective reserve accounts for the Additional Insured Parity Bonds shall be collectively referred to herein as the “Insured Reserve Accounts”) in an amount equal to each respective reserve requirement therefor (the “Debt Service Reserve Insurance Policy”);

WHEREAS, the Debt Service Reserve Insurance Commitment includes a form of “Debt Service Reserve Agreement” by and between the Issuer and BAM (the “Debt Service Reserve Agreement”) which provides, in part, that any payments made, or Policy Costs incurred, by BAM pursuant to the Debt Service Reserve Insurance Policy shall be repaid to BAM by the Issuer pursuant to the terms of the Debt Service Reserve Agreement;

WHEREAS, the West Virginia Water Development Authority (the “WDA”) initially purchased, and remains the sole Registered Owner of, the Series 2019 B Bonds;

WHEREAS, Section 11.01 of the Bond Ordinance provides that written consent of the Registered Owners of the Series 2019 B Bonds to amendment or modification of the Bond Ordinance is required prior to any such amendment or modification;

WHEREAS, the WDA, as sole Registered Owner of the Series 2019 B Bonds, has consented to the amendment and modification of the Bond Ordinance to authorize any Debt Service Reserve Insurance Policy as provided in this Second Supplemental Resolution;

WHEREAS, the Issuer desires to purchase, and pledge to the respective Insured Reserve Accounts, the Debt Service Reserve Insurance Policy in an amount equal to the respective reserve requirements for the Series 2019 B Bonds and the Additional Insured Parity Bonds (collectively, the “Reserve Requirements”), and for the monies on deposit in the Insured Reserve Accounts to be released to the Morgantown Utility Board (the “Board”) and used as provided herein; and

WHEREAS, the Governing Body deems it essential and desirable that this Second Supplemental Resolution be adopted, and that the Bond Ordinance be amended and modified as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MORGANTOWN:

Section 1. The Bond Ordinance is hereby amended and modified by adding a new Section 6.19 in the Bond Ordinance as set forth below:

Section 6.19. Reserve Account Credit Facility. In lieu of or in addition to cash or investments, at any time the Issuer may, with the prior written consent of the Registered Owners of the Series 2019 B Bonds, cause to be deposited with the Commission and pledged to the Series 2019 B Bonds Reserve Account any form of Reserve Account Credit Facility, in the amount of the Series 2019 B Bonds Reserve Requirement, or any lesser amount, irrevocably payable to the Commission as beneficiary for the Registered Owners of the Series 2019 B Bonds. In the event the Series 2019 B Bonds Reserve Account is initially funded, in whole or in part, with proceeds of the Series 2019 B Bonds, or from monthly payments from Gross Revenues of the System by the Issuer, the Issuer may deposit a Reserve Account Credit Facility to replace all or any portion of the monies on deposit in the Series 2019 B Bonds Reserve Account and any monies then on deposit in the Series 2019 B Bonds Reserve Account, and required to be on deposit therein, shall be returned to the Board and used to pay the costs of delivering such Reserve Account Credit Facility and/or to pay the costs of design, acquisition, construction and equipping of capital additions, betterments and improvements for the System. The term "Reserve Account Credit Facility" shall mean any municipal bond debt service reserve insurance policy, surety bond, letter of credit or similar financial instrument that the Issuer deposits with the Commission and pledges to the Series 2019 B Bonds Reserve Account.

(1) Any such Reserve Account Credit Facility shall be payable to the Commission as beneficiary for the Registered Owners of the Series 2019 B Bonds, shall have a term of no less than one (1) year and shall be payable (upon the giving of such notice as may be required thereunder) (i) on any date on which moneys are required to be withdrawn from the Series 2019 B Bonds Reserve Account due to insufficient amounts in the applicable funds and accounts held by the Commission with respect to the Series 2019 B Bonds when needed to pay debt service on such Bonds or (ii) on a date not more than ten (10) days prior to the expiration date of the Reserve Account Credit Facility in the event the Issuer has not satisfied any of the requirements for a Reserve Account Credit Facility for which the expiration date is not coterminous with the Series 2010 D Bonds set forth in (i), (ii) or (iii) below. Not less than three (3) months prior to any stated expiration date of such Reserve Account Credit

Facility for any Reserve Account Credit Facility that is not conterminous with the final maturity date of the Series 2019 B Bonds, the Issuer shall either (i) provide for delivery of a replacement Reserve Account Credit Facility which satisfies the requirements of this Section 6.19, (ii) deliver an extension of the Reserve Account Credit Facility for a term of not less than one (1) year, or (iii) deposit cash in the Series 2019 B Bonds Reserve Account in an amount which satisfies the requirements of this Section 6.19. Upon delivery of a replacement Reserve Account Credit Facility, the Commission shall deliver the then-effective Reserve Account Credit Facility to, or at the direction of, the Issuer.

(2) In the event the Commission draws upon a Reserve Account Credit Facility, the Issuer shall pay to the provider thereof, from the Revenue Fund in accordance with the priority for funding of all reserve accounts from Gross Revenue set forth in Section 5.03 hereof, all principal and interest and expenses payable thereto under the terms of the applicable Reserve Account Credit Facility. This Bond Ordinance shall not be terminated until all such amounts are paid in full.

(3) The Commission shall maintain adequate records of (i) the amount available to be drawn at any time under any Reserve Account Credit Facility; and (ii) the amounts paid and payable by the Issuer to the provider thereof.

(4) In the event the Series 2019 B Bonds Reserve Account is, at any time, only partially funded by a Reserve Account Credit Facility and the Commission is required to withdraw any monies from the Series 2019 B Bonds Reserve Account, the Commission shall (i) first disburse any cash or investments in the Series 2019 B Bonds Reserve Account until such cash or investments are exhausted and, thereafter, draw on said Reserve Account Credit Facility, and (ii) reimburse the provider of said Reserve Account Credit Facility an amount equal to the aggregate amount drawn on such Reserve Account Credit Facility (including any interest accrued on any amount drawn under said Reserve Account Credit Facility) before replenishing the cash or investments in order to restore said Series 2019 B Bonds Reserve Account to the Series 2019 B Bonds Reserve Requirement.

Section 2. The Bond Ordinance is hereby amended and modified by adding a new Section 6.20 in the Bond Ordinance as set forth below:

Section 6.20. Provisions related to Build America Mutual Assurance Company Municipal Bond Debt Service Reserve Insurance Policy.

With respect to the Municipal Bond Debt Service Reserve Insurance Policy, notwithstanding anything to the contrary set forth in this Bond Ordinance the Issuer agrees to comply, and hereby authorizes and

instructs the Commission, as Paying Agent, to comply with the following provisions:

(a) The Issuer shall repay any draws under the Municipal Bond Debt Service Reserve Insurance Policy (the “Reserve Policy”) and pay all related reasonable expenses incurred by BAM (the “Reserve Insurer”). Interest shall accrue and be payable on such draws and expenses from the date of payment by the Reserve Insurer at the Late Payment Rate. “Late Payment Rate” means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such changes are announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Series 2019 B Bonds, and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such bank, banking association or trust company bank as the Reserve Insurer in its sole and absolute discretion shall specify.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, the “Policy Costs”) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Reserve Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Reserve Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Series 2019 B Bonds Reserve Account and all other available amounts in any funds available to pay debt service on the Bonds shall be transferred to the Series 2019 B Bonds Sinking Fund for payment of the debt service on the Series 2019 B Bonds before any drawing may be made on the Reserve Policy or any other Reserve Account Credit Facility on deposit in the Series 2019 B Bonds Reserve Account.

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Reserve Account Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the

Series 2019 B Bonds Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to each other Reserve Account Credit Facility shall be made on a pro-rata basis prior to replenishment of any cash drawn from the respective Reserve Funds. For the avoidance of doubt, “available coverage” means the coverage then available for disbursement pursuant to the terms of the applicable Reserve Account Credit Facility without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve requirement of the Series 2019 B Bonds.

(b) Draws under the Reserve Policy may only be used to make payments on Series 2019 B Bonds and other obligations on a parity therewith which are covered under the Reserve Policy.

(c) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Reserve Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Bond Ordinance or any other document executed in connection with the Series 2019 B Bonds (collectively, the “Security Documents”).

(d) The Security Documents shall not be discharged until all Policy Costs owing to the Reserve Insurer shall have been paid in full. The Issuer’s obligation to pay such amount shall expressly survive payment in full of the Series 2019 B Bonds.

(e) The Reserve Policy shall expire and terminate in accordance with the terms and provisions of the Reserve Policy and Debt Service Reserve Agreement.

(f) Any amendment, supplement, modification to, or waiver of any of the Security Documents that requires the consent of the Registered Owners of the Bonds or adversely affects the rights or interest of the Reserve Insurer shall be subject to the prior written consent of the Reserve Insurer.

(g) The Reserve Insurer is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

(h) Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Security Documents.

(i) The Commission shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) hereof and shall provide notice to the Reserve Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the Series 2019 B Bonds and a draw on the Reserve Policy is anticipated to make such payment. Where deposits are required to be made by the Issuer with the Commission to the debt service fund for the Series 2019 B Bonds more often than semi-annually, the Commission shall give notice to the Reserve Insurer of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

(j) The Issuer agrees unconditionally that it will pay or reimburse the Reserve Insurer on demand, but solely from the Gross Revenues of the System, any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Reserve Insurer may pay or incur, including, but not limited to, fees and expenses of the Reserve Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Bond Ordinance or any other Security Document ("Administrative Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Reserve Insurer spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Reserve Insurer until the date the Reserve Insurer is paid in full.

(k) Payments made by the Reserve Insurer under the Reserve Policy with respect to claims for interest on or principal of the Series 2019 B Bonds shall not discharge the obligation of the Issuer with respect to such Series 2019 B Bonds, and BAM shall become the owner of such unpaid Series 2019 B Bonds and claims for the interest thereon. The Issuer and the Commission recognize and agree that to the extent the Reserve Insurer makes payments directly or indirectly (e.g., by paying through the Paying Agent), on account of principal of or interest on the Series 2019 B Bonds, the Reserve Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon.

(l) In order to secure the Issuer's payment obligations with respect to Policy Cost, there is hereby granted and perfected in favor of the Reserve Insurer a security interest (subordinate only to that of the owners of the Series 2019 B Bonds and all bonds issued on a parity therewith, including the Prior Bonds and all subsequently issued additional parity

bonds) in all revenues and collateral pledged as security for the Series 2019 B Bonds. Policy Costs shall be paid to the Reserve Insurer immediately following the payment of principal of and interest on the Series 2019 B Bonds and all Parity Bonds, including following the occurrence of a default or event of default.

(m) Notice and Other Information to be given to the Reserve Insurer.

(1) The Board will provide the Reserve Insurer with all notices and other information it is obligated to provide (i) under its Disclosure Dissemination Agent Agreement for the Issuer's Combined Utility System Refunding Revenue Bonds, Series 2020 A (Tax Exempt) (the "Series 2020 A Bonds") even if the Series 2020 A Bonds are no longer outstanding and (ii) to the Registered Owners of the Series 2019 B Bonds or Paying Agent under the Security Documents.

(2) In addition, the Issuer shall provide the Reserve Insurer with the following notices and other information: prior written notice of the advance refunding or redemption of any of the Series 2019 B Bonds, including the principal amount, maturities and CUSIP numbers thereof, if any.

(3) The Reserve Insurer shall be entitled to receive such additional information as it may reasonably request.

(4) The notice address of Reserve Insurer is:

Build America Mutual Assurance Company
 200 Liberty Street, 27th Floor
 New York, NY 10281
 Attention: Surveillance, Re: Policy No. _____
 Telephone: (212) 235-2500
 Telecopier: (212) 235-1542 Email:
notices@buildamerica.com

A copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214.

Section 3. The Issuer hereby accepts, approves and ratifies the Debt Service Reserve Insurance Commitment and the form of the Debt Service Reserve Agreement, with such changes as shall be approved by the City Manager and/or Mayor in their respective discretion, and does hereby authorize the Mayor, City Clerk and City Manager to execute such documents and to take any and all actions required to consummate the transactions contemplated therein, specifically including, but not limited to (i) the purchase, and pledge to the Series 2019 B Bonds Reserve Account, of the Debt Service Reserve Insurance Policy; (ii) the release to the Board which operates the System of the monies currently on deposit in the Series 2019 B Bonds Reserve Account; and (iii) the payment by the Board of all costs

associated with actions authorized in this Supplemental Resolution, specifically including, but not limited to, the premium for the Debt Service Reserve Insurance Policy and all professional fees and costs related to the issuance of same.

Section 4. The Issuer authorizes the Board to use and the Board shall use any funds released from the Series 2019 B Bonds Reserve Account as a result of pledging the Debt Reserve Insurance Policy thereto for (i) paying costs associated with obtaining the Debt Service Reserve Insurance Policy, specifically including, but not limited to, the premium paid to BAM for the Debt Service Reserve Insurance Policy; and (ii) paying costs of design, acquisition, construction and equipping of additions, betterments, and/or improvements to the System.

Section 5. The Mayor, City Clerk and City Manager, and all other appropriate officers, employees and agents of the Issuer, are hereby authorized, empowered and directed to do any and all things proper and necessary to cause to occur the actions provided for in this Supplemental Resolution, and no further authority shall be necessary to authorize any such officers, employees and agents of the Issuer to give such further assurance and do such further acts as may be legally required.

[Remainder of Page Intentionally Blank]

Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By: _____
Its: City Manager

By: _____
Its: Mayor

CERTIFICATION

Certified a true, correct and complete copy of a Second Supplemental Resolution duly adopted by the Council of The City of Morgantown on the ____ day of _____, 2022, which Resolution has not been amended or modified in any respect from such date of adoption and remains in full force and effect as of the date hereof.

Dated: _____, 2022.

[SEAL]

City Clerk

EXHIBIT A

Form of

BAM Municipal Bond Debt Service Reserve Insurance Commitment

(see attached)