



MORGANTOWN
CITY CLERK

304-284-7439
Morgantownwv.gov
389 Spruce St.
Morgantown, WV 26505

AGENDA

CITY COUNCIL REGULAR MEETING

City Hall Council Chambers, 389 Spruce Street, 2nd Floor, Morgantown, WV 26505

Tuesday, February 04, 2025, at 7:00 PM

This meeting will be broadcast live via YouTube at City of Morgantown - YouTube

<https://www.youtube.com/@CityofMorgantown/streams>

- 1. PLEDGE:**
- 2. CALL TO ORDER:**
- 3. ROLL CALL:**
- 4. APPROVAL OF MINUTES:**
 - A. January 21, 2025, Regular Meeting Minutes
 - B.** January 28, 2025, Special Meeting Minutes
 - C.** January 28, 2025, Committee of the Whole Meeting Minutes
- 5. CORRESPONDENCE:**
 - A. Presentation - Library Board of Directors Update - Sarah Palfrey
- 6. PUBLIC HEARINGS:**
- 7. UNFINISHED BUSINESS:**
- 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 **APPROVAL** of (**First Reading**) of **An Ordinance Authorizing MOU among City, Building Commission, and WVU Hospitals, Inc.**
 - B.** Consideration of **APPROVAL** of (**First Reading**) of **An Ordinance Amending the City Charter to Use Gender Neutral Language**

- C.** Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance providing for the Zoning Reclassification of certain portions of parcels of real estate in the Sixth Ward of the City of Morgantown, Tax District 14, Tax Map 31, Parcel 16, commonly known as 11 Hartman Run Road from a R-1A, Single-Family Residential District and a B-2, Service Business District to a B-2, Service Business District amending Article 1331 of the Planning and Zoning Code of the City of Morgantown as shown on the exhibit hereto attached and declared to be part of this ordinance as if the same were fully set forth within**
- D.** Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance Authorizing a Commercial Lease and Operating Agreement with Shaft Drillers International at the Morgantown Municipal Airport**
- E.** Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance Amending Article 923 entitled Industrial Wastes**
- F.** Consideration of **Sole Source purchase of Mowing Equipment**
- G.** Consideration of **Order Granting Exemption of Vacant Structure Registration at 528 Monongalia Avenue**

12. CITY MANAGER'S REPORT:

13. REPORT FROM CITY CLERK:

14. REPORT FROM CITY ATTORNEY:

15. REPORT FROM COUNCIL MEMBERS:

16. EXECUTIVE SESSION:

- A.** Discussion of Matters Relating to Acquisition or Development of Property in the Downtown Area

17. ADJOURNMENT:

For accommodations please call or text 304-288-7072

SPECIAL MEETING MINUTES January 21, 2025

Special Meeting January 21, 2025: The Special Meeting of the Common Council of the City of Morgantown was held at City Hall Council Chambers on Tuesday, January 21, 2025, at 6:04 p.m.

Present: Mayor Joe Abu-Ghannam, Deputy Mayor Jenny Selin, Council Members, Bill Kawecki, Louise “Weez” Michael (Via Zoom), Danielle Trumble, Dave Harshbarger, and Brian Butcher.

EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9A-4(b)(2)(A) to consider matters relating to appointment or employment of public officers or employees. Motion by Deputy Mayor Selin, second by Councilor Trumble, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:06 p.m.

Adjournment:

There being no further business, motion by Councilor Trumble, second by Councilor Harshbarger, to adjourn the meeting. Time: 7:06 p.m.

City Clerk

Mayor

City of Morgantown

Item 4C.

MINUTES COMMITTEE OF THE WHOLE MEETING January 28, 2025

The Committee of the Whole Meeting, January 28, 2025: The Committee of the Whole Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers, on Tuesday, January 28, 2025, at 7:15 p.m.

PRESENT: Interim City Manager Damien Davis, City Attorney Ryan Simonton, Mayor Joe Abu-Ghannam, Deputy Mayor Jenny Selin, Council Members, Bill Kawecki, Louise “Weez” Michael, Danielle Trumble, and Brian Butcher. Dave Harshbarger and Assistant City Manager Emily Muzzarelli were absent.

The meeting was called to order by Deputy Mayor Selin.

PRESENTATIONS:

WVU Hospitals Eye Institute Project

Representatives from WVU Hospital presented to council the state-of-the-art Eye Institute that will replace the current one that is currently attached to Ruby Memorial Hospital.

Main Street Morgantown Update – Erik Carlson, Vice-President Main Street Morgantown

Erik Carlson presented to council an update on Main Street Morgantown.

WVU SGA Safety Walk

Mimi Ferguson, WVU SGA, Local Governance Liaison and Cate Magrogan, WVU SGA, Senator/Chair of Health & Safety Committee presented to city council and update of the Safety Walk.

PUBLIC PORTION:

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

Marti Shamberger, 812 Ridgeway Avenue, invited council to spend an evening with the Servants League at the History Museum with an exhibit, on Friday evening 6pm – 9pm to celebrate the 90th Anniversary of the History Museum and the 230th Anniversary of the Old Stone House. She noted that she is happy with what is being done in Morgantown with the new development of the New Eye Institute and the new development on Richwood Avenue. She also thanked the City Manager for how well the crew worked during and after the storms with clearing all the roads and snow removal.

Kathryn Carder, Destination Development Coordinator with CVB Mountaineer Country gave an update of the CVB. She stated that they will be coming regularly to meetings to give updates.

There being no one else wishing to speak, Mayor Abu-Ghannam closed the Public Portion.

ITEMS FOR DISCUSSION:

A. An Ordinance authorizing MOU among City, Building Commission, and WVU Hospitals, Inc.

City Attorney Ryan Simonton explained. No discussion. This item is being referred to the February 4, 2025, Regular Meeting Agenda.

B. An Ordinance amending the City Charter to Use Gender Neutral Language

City Attorney Ryan Simonton explained. No discussion, this item is being referred to the February 4, 2025, Regular Meeting Agenda.

C. An Ordinance providing for the Zoning Reclassification of certain portions of parcels of real estate in the Sixth Ward of the City of Morgantown, Tax District 14, Tax Map 31, Parcel 16, commonly known as 11 Hartman Run Road from a R-1A, Single-Family Residential District and a B-2, Service Business District to a B-2, Service Business District amending Article 1331 of the Planning and Zoning Code of the City of Morgantown as shown on the exhibit hereto attached and declared to be a part of this ordinance as if the same were fully set forth within

Director of Development Services Rickie Yeager explained. No discussion, this item is being referred to the February 4, 2025, Regular Meeting Agenda.

D. An Ordinance authorizing a Commercial Lease and Operating Agreement with Shaft Drillers International at the Morgantown Municipal Airport

Airport Director Jon Vrabel explained. No discussion, this item is being referred to the February 2, 2025, Regular Meeting Agenda.

EXECUTIVE SESSION:

ADJOURNMENT: There being no further business, motion by Councilor Michael, second by Mayor Abu-Ghannam, to adjourn the meeting. Time: 8:30 p.m.

City Clerk

Mayor

City OrdinanceORDINANCE OF THE CITY OF MORGANTOWN

AN ORDINANCE AUTHORIZING AND APPROVING THE CONVEYANCE BY THE MORGANTOWN BUILDING COMMISSION (THE “BUILDING COMMISSION”) TO WEST VIRGINIA UNIVERSITY HOSPITALS, INC. (“WVUH”) OF A PORTION OF THE REAL PROPERTY COMPRISING THE SITE OF THE NORTH SIDE FIRE STATION AND THE ACQUISITION FROM WVUH OF A LIKE AMOUNT OF ADJACENT PROPERTY PURSUANT TO A PROPERTY EXCHANGE; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL AGREEMENT AND LEASE AND A FIRST SUPPLEMENT AND AMENDMENT TO CREDIT LINE DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT RELATED TO THE BUILDING COMMISSION’S LEASE REVENUE REFUNDING BONDS, SERIES 2013 A (NORTH SIDE FIRE STATION PROJECT) (THE “SERIES 2013 A BONDS”); AND AUTHORIZING OTHER MATTERS, THE EXECUTION AND DELIVERY OF ALL OTHER DOCUMENTS AND THE TAKING OF ALL OTHER ACTIONS RELATING TO SUCH PROPERTY EXCHANGE AND THE SERIES 2013 A BONDS.

WHEREAS, The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the “City”) has, pursuant to an ordinance enacted August 16, 1988, created and established the Morgantown Building Commission (the “Building Commission” or “Issuer”), a public corporation and municipal building commission, pursuant to the authority granted to it in Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the “Act”);

WHEREAS, the Building Commission, under the Act, has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Building Commission deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, including municipal buildings, jail facilities, police stations, fire stations, and other public buildings, and

the City has heretofore deemed the design, acquisition, construction and equipping of the North Side Fire Station to be necessary and appropriate for the public interest;

WHEREAS, the Building Commission has heretofore obtained title to certain real estate, situate lying and being in the City, Monongalia County, West Virginia, as described in Exhibit A – Site Description to the hereinafter described Original Indenture (the “Original Site”), and the City has acquired and constructed thereon a North Side Fire Station to provide fire protection services to the City and the City has acquired and installed certain fixtures, equipment, furnishings and other personal property within such building, or has acquired certain equipment and other personal property in connection with the use of such facility, including but not limited to a fire truck and all related appurtenances thereto (such real estate, buildings, fixtures, equipment, furnishings and other personal property within such buildings or used in connection therewith, together with all rights of way and appurtenances thereto, herein called the “Facilities”);

WHEREAS, the Building Commission under the Act has the power and authority to raise funds by the issuance and sale of revenue bonds in the manner provided by certain provisions of Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the “Revenue Bond Act”);

WHEREAS, pursuant to the Act, certain provisions of Revenue Bond Act, and an Ordinance of the Building Commission enacted and adopted on November 26, 2012, as supplemented by a Supplemental Resolution adopted by the Building Commission on November 26, 2012 and by a Second Supplemental Resolution adopted by the Building Commission on June 6, 2013 (collectively, the “Original Ordinance”), the Building Commission issued its Lease Revenue Refunding Bonds, Series 2013 A (North Side Fire Station Project), dated June 28, 2013 (the “Series 2013 A Bonds”), under an Indenture of Trust, dated as of June 1, 2013 (the “Original Indenture”), by and between the Building Commission and Wesbanco Bank, Inc. (the “Trustee”) for the purpose of, among other things, refunding the Series 2008 A Bonds which were issued to pay the costs of acquisition and construction of the Facilities;

WHEREAS, the Original Indenture was recorded in the office of the Clerk of the County Commission of Monongalia County at Trust Deed Book No. 1951, page 65;

WHEREAS, the Building Commission leases the Facilities to the City pursuant to an Agreement and Lease dated as of June 1, 2013, of record in the office of the Clerk of the County Commission of Monongalia County at Deed Book No. 1480, page 800 (the “Original Lease”);

WHEREAS, the Series 2013 A Bonds are payable solely from and secured by the rentals paid by the City under the Original Lease and are further secured by the pledges and security interests granted by the Building Commission pursuant to a Credit Line Deed of Trust, Fixture Filing and Security Agreement dated as of June 1, 2013, by and among the Building Commission and the City, as grantors, the trustee named therein, and the Trustee, as beneficiary, of record in the office of the Clerk of the County Commission of Monongalia County at Trust Deed Book 1951, page 142 (the “Original Deed of Trust”);

WHEREAS, representatives of West Virginia University Hospitals, Inc., a West Virginia non profit corporation (“WVUH”) have approached the City seeking to acquire a portion of the Original Site (“Parcel 1”) to facilitate proper access to a new healthcare facility of WVUH which is planned to be constructed on a parcel of real property immediately adjacent to the Original Site;

WHEREAS, in exchange for the conveyance to WVUH of Parcel 1, WVUH will convey a like amount of its immediately adjacent real property (“Parcel 2”) to the Building Commission (the conveyance of Parcel 1 from the Building Commission to WVUH and the conveyance of Parcel 2 from WVUH to the Building Commission are collectively referred to herein as the “Property Exchange”);

WHEREAS, the Property Exchange will also include the execution and delivery by WVUH and the Issuer of an Easement Agreement, made and entered into as of _____, 2025 (the “Easement Agreement”), pursuant to which, among other things (i) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way for a portion of the Building Commission Property (as defined therein), (ii) the Issuer retains the right to use and enjoy the Relocated Fire Station Access Road Easement (as defined therein), (iii) WVUH conveys unto the Issuer a temporary, non-exclusive easement and right of way through a portion of the WVU Property (as defined therein) during WVUH’s construction of the Relocated Fire Station Access Road, (iv) Issuer and WVUH stipulate that each shall have a permanent, reciprocal easement with respect to the portions of the WVUH Property and Building Commission Property described therein for the purpose of construction and maintenance of utilities serving the area, and (v) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way through a portion of the Building Commission Property for the purposes of constructing, utilizing and maintaining a pedestrian sky bridge;

WHEREAS, the City has and does hereby (i) request the Building Commission to consummate the Property Exchange, (ii) request the Trustee’s consent to the consummation of the Property Exchange and execution of the necessary documents to complete same, (iii) find that the Property Exchange is not detrimental to the use of the Facilities as intended, (iv) find that Parcel 1 is not necessary for the operation of the Facilities, and (v) find that the value of the Facilities is not adversely affected by the Property Exchange;

WHEREAS, in the event that the Property Exchange is consummated, the instruments listed below must be executed and delivered contemporaneously therewith in order to reflect the revised real property descriptions resulting from the Property Exchange:

- (i) First Supplemental Indenture of Trust between the Building Commission and the Trustee (the “Supplemental Indenture”);
- (ii) First Supplemental Agreement and Lease between the Building Commission, as lessor, and the City, as lessee (the “Supplemental Lease”);
- (iii) First Supplement and Amendment to Credit Line Deed of Trust, Fixture Filing and Security Agreement (the “Supplemental Deed of Trust”);

- (iv) Easement Agreement; and
- (v) Deed of Exchange by and between WVUH and the Building Commission (the “Deed”).

WHEREAS, the City desires to take all steps necessary to authorize and approve the consummation of the Property Exchange and the execution and delivery by the City of the Supplemental Lease and the Supplemental Deed of Trust in connection therewith;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MORGANTOWN AS FOLLOWS:

Section 1. The City hereby authorizes and approves the consummation of the Property Exchange by and between the Building Commission and WVUH as described herein including the execution and delivery by the Building Commission of the Deed, the Easement Agreement and such other instruments of conveyance as may be necessary in connection with same.

Section 2. The Mayor and Interim City Manager of the City are hereby authorized and directed to execute, acknowledge, if necessary, and deliver the Supplemental Lease, with such changes, insertions, variations and omissions as may be approved by the Mayor and Interim City Manager, and the City Clerk of the City is authorized and directed to affix the seal of the City thereto and to attest the same. The execution of the Supplemental Lease by the Mayor and Interim City Manager shall be conclusive evidence of such approval.

Section 3. The Mayor and Interim City Manager of the City are hereby authorized and directed to execute, acknowledge, if necessary, and deliver the Supplemental Deed of Trust, with such changes, insertions, variations and omissions as may be approved by the Mayor and Interim City Manager, and the City Clerk of the City is authorized and directed to affix the seal of the City thereto and to attest the same. The execution of the Supplemental Deed of Trust by the Mayor and Interim City Manager shall be conclusive evidence of such approval.

Section 4. The consummation of the Property Exchange and the execution, delivery and due performance of the Supplemental Lease and the Supplemental Deed of Trust in connection therewith are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the Property Exchange, and it is hereby ordered that the Mayor, Interim City Manager, City Clerk and other members and officers of the City execute and deliver the Supplemental Lease, the Supplemental Deed of Trust and all other documents relating thereto, and take such other action as may be necessary or desirable to carry out the purposes of this Ordinance, the Series 2013 A Bonds and the Property Exchange.

Section 5. All orders, ordinances, resolutions or other actions or parts thereof of the City which conflict with this Ordinance are hereby expressly repealed.

Section 6. Upon adoption of this Ordinance on first reading, the City Clerk of the City is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the City to contain sufficient information to give notice of the contents

of such Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in the Dominion Post, a newspaper published and having a general circulation in The City of Morgantown, West Virginia, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the City contemplates the consummation of the transactions described in this Ordinance, and that any person interested may appear before the City at the public hearing to be had at a public meeting of the City on Tuesday, February 18, 2025, at 7:00 p.m., prevailing time, in the Council Chambers at Morgantown City Hall, 389 Spruce Street, Morgantown, West Virginia and present protests, and that a certified copy of this Ordinance is on file with the City Clerk of the City for review by interested parties during the office hours of the City. At such hearing all protests and suggestions shall be heard by the City Council of the City and it shall then take such action as it shall deem proper in the premises.

Section 7. This Ordinance shall become effective following public hearing hereon in accordance with the Act.

First Reading: February 4, 2025

Public Hearing
and Final Enactment
Held On: February 18, 2025

Mayor

Interim City Manager

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of The City of Morgantown does hereby certify that the foregoing Ordinance was duly enacted by The City of Morgantown at regular meetings duly held, pursuant to proper notice thereof, on February 4, 2025, and February 18, 2025, at Council Chambers at the Morgantown Municipal Building, a quorum being present and acting throughout, and which Ordinance has not been modified, amended or revoked and is a true, correct and complete copy thereof as witness my hand this _____, 2025.

By: _____
Its City Clerk

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is dated as of this ____ day of January 2025 (the “Effective Date”), by and among WEST VIRGINIA UNIVERSITY HOSPITALS, INC., a West Virginia non-profit corporation (the “Hospital”), and THE CITY OF MORGANTOWN, WEST VIRGINIA, a municipal corporation and political subdivision of the State of West Virginia (the “City” and together with the Hospital, the “Parties”).

WHEREAS, the Hospital is the owner of certain real estate located and situate in the Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, being more particularly described as Exhibit A attached hereto and incorporated herein by this reference, being identified for real estate tax purposes as a portion of Tax Map 6, Parcel 76.2 and a portion of Tax Map 6, Parcel 74 (collectively, the “Hospital Property”).

WHEREAS, the Hospital intends to build and construct a new medical office building and a new parking garage on the Hospital Property (the “Project”).

WHEREAS, the Morgantown Building Commission, a public corporation and municipal building commission (the “Building Commission”) owns certain real property located adjacent to and contiguous with the Hospital Property, being more particularly described as Exhibit B attached hereto and incorporated herein by this reference, and being identified for real estate tax purposes as Tax Map 6, Parcel 74.3, Tax Map 6, Parcel 76.3 and Tax Map 6, Parcel 76.4 (collectively, the “Building Commission Property”).

WHEREAS, the Building Commission has leased and let unto the City, and the City has rented and leased from the Building Commission, the Building Commission Property pursuant to the terms and provisions of that certain Agreement and Lease, dated as of June 1, 2013 (the “Lease”).

WHEREAS, the City operates its northside fire station (the “Fire Station”) on and about the Building Commission Property.

WHEREAS, in connection with the Project, the Hospital desires to relocate and reconfigure a portion of the access road located and situate on the Building Commission Property which bifurcates the Hospital Property and which provides vehicular ingress, egress and regress to and from the City’s Fire Station and Van Voorhis Road (West Virginia State Route 705) (the “Fire Station Access Road”).

WHEREAS, in furtherance of the Hospital’s Project and to facilitate the relocation of the Fire Station Access Road, the Hospital and the City have agreed in principal to the swap and exchange of parcels (the “Swap and Exchange”) with (a) the Hospital granting and conveying to the Building Commission all of that certain lot or parcel described on Exhibit C attached hereto and incorporated herein by this reference (the “New Building Commission Parcel”), and (b) the Building Commission granting and conveying to the Hospital all of that certain lot or parcel described on Exhibit D attached hereto and incorporated herein by this reference (the “New Hospital Parcel”);

WHEREAS, in connection with the Swap and Exchange transaction, the Hospital, at the Hospital’s sole cost and expense, shall relocate the Fire Station Access Road on the New Building Commission Parcel, in the location and configuration shown and depicted on Exhibit E attached hereto and incorporated herein by this reference (the “Relocated Fire Station Access Road”);

WHEREAS, in connection with the Swap and Exchange transaction, the Hospital shall reserve and retain a permanent non-exclusive easement on, over and across the Relocated Fire Station Access

Road for the purpose of ingress, egress and regress to and from the Hospital Property and the New Hospital Parcel and Van Voorhis Road, subject to the terms and conditions stated in a Deed of Exchange and/or Easement Agreement(s) to be executed by and/or among the Parties in furtherance of this MOU.

WHEREAS, in connection with the Swap and Exchange transaction, the Hospital shall grant to the Building Commission and the City a non-exclusive, temporary easement through a portion of the Hospital Property, as the same is shown and depicted on Exhibit F attached hereto and incorporated herein by this reference, for temporary, unfettered and continuous ingress, egress and regress to and from the Fire Station and Van Voorhis Road from the date on which the Hospital commences construction of the Relocated Fire Station Access Road until completion such that the Building Commission and City has continuous vehicular access, including with all necessary fire apparatus, to the Fire Station via the completed Relocated Fire Station Access Road.

WHEREAS, as part of the Project, the Hospital intends to build and construct an elevated pedestrian walking bridge from the new parking garage being constructed on the Hospital Property to the new medical office building being constructed on the Hospital Property, as the same is shown and depicted on Exhibit E attached hereto (the "Pedestrian Bridge").

WHEREAS, the City acknowledges and agrees that the Hospital shall except, reserve and retain a permanent, exclusive easement and right of way on, over and across the Relocated Fire Station Access Road and the New Building Commission Parcel for the purpose of building, constructing, using, enjoying, operating, maintaining, repairing and replacing the Pedestrian Bridge, subject to the terms and conditions stated in a Deed of Exchange and/or Easement Agreement(s) to be executed by and/or among the Parties in furtherance of this MOU.

WHEREAS, the Hospital acknowledges and agrees that the City and/or Building Commission, as their interests may appear, shall except, reserve and retain a permanent, exclusive easement and right of way on, over and across the Fire Station Access Road and the New Hospital Parcel for the purpose of ingress, egress, and regress to property of the City and/or Building Commission and for the installation, replacement, addition, extension, building, constructing, using, enjoying, operating, maintaining, repairing and replacing utilities, subject to the terms and conditions stated in a Deed of Exchange and/or Easement Agreement(s) to be executed by and/or among the Parties in furtherance of this MOU.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. The Hospital and the City agree to use best efforts to effectuate the proposed Swap and Exchange whereby (a) the Hospital shall grant and convey to the Building Commission the New Building Commission Parcel, and (b) the Building Commission shall grant and convey to the Hospital the New Hospital Parcel; provided, that, it is mutually acknowledged and understood that the above-described Swap and Exchange must be formally approved by (i) the Hospital's senior management and board of directors, If necessary, (ii) the Building Commission, and (iii) the city council of the City. Furthermore, the New Hospital Parcel is currently burdened and encumbered by that certain Credit Line Deed of Trust, Fixture Filing and Security Agreement from the Building Commission to Charles M. Johnson, as Trustee, securing WesBanco Bank, Inc. (the "Bond Trustee") in connection with the Building Commission's Lease Revenue Refunding Bonds, Series 2013 A (North Side Fire Station Project) in the original aggregate principal amount of \$3,560,000.00, dated June 1, 2013 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Trust Deed Book 1951, Page 142 (the "Deed of Trust"). Thus, the Swap and Exchange is conditioned upon the Bond Trustee's execution and delivery of a partial release and subordination agreement, substantially similar in form and substance

to Exhibit G attached hereto and incorporated herein by this reference (the “Partial Release and Subordination Agreement”), for the purposes of (X) releasing the New Hospital Parcel from the lien and security interest of the Deed of Trust, and (Y) subordinating the lien and security interest of the Deed of Trust to the terms and provisions of the easements described in Section 2, 3 and 4 of this MOU.

2. In connection with the Swap and Exchange, the Hospital, at the Hospital’s sole cost and expense, shall build and construct the Relocated Fire Station Access Road on the New Building Commission Parcel. Construction shall comply with City’s Street Design and Classification Manual and shall be suitable for use by Morgantown Fire Department fire apparatus. The Hospital shall reserve and retain a permanent non-exclusive easement on, over and across the Relocated Fire Station Access Road for the purpose of ingress, egress and regress to and from the Hospital Property and the New Hospital Parcel and Van Voorhis Road, subject to the terms and conditions stated in a Deed of Exchange and/or Easement Agreement(s) to be executed by and/or among the Parties in furtherance of this MOU. The Hospital agrees to grant and convey to the Building Commission and the City a non-exclusive, temporary easement through a portion of the Hospital Property, as the same is shown and depicted on Exhibit F attached hereto and incorporated herein by this reference, for unfettered and continuous ingress, egress and regress to and from the Fire Station and Van Voorhis Road from the date on which the Hospital commences construction of the Relocated Fire Station Access Road until completion such that the Building Commission and City has vehicular access to the Fire Station via the completed Relocated Fire Station Access Road.

3. The Parties acknowledge and agree that there are existing utility lines and facilities located within and under the New Building Commission Parcel and the New Hospital Parcel. The Hospital intends to relocate certain utilities lines and facilities and/or install additional lines and facilities in connection with the Project. As part of the Swap and Exchange, the Hospital and the Building Commission shall have a permanent, non-exclusive reciprocal easement on, over, across and under the area shown and depicted on Exhibit H attached hereto and incorporated herein by this reference, to install, maintain, repair and replace utility lines and facilities within and underlying the New Hospital Parcel and the New Building Commission Parcel, subject to the terms and conditions stated in a Deed of Exchange and/or Easement Agreement(s) to be executed by and/or among the Parties in furtherance of this MOU.

4. The Parties acknowledge and agree that the Hospital shall except, reserve and retain a permanent, exclusive easement and right of way on, over and across the Relocated Fire Station Access Road and the New Building Commission Parcel for the purpose of building, constructing, using, enjoying, operating, maintaining, repairing, and replacing the Pedestrian Bridge, as the same is shown and depicted on Exhibit E attached hereto, subject to the terms and conditions stated in a Deed of Exchange and/or Easement Agreement(s) to be executed by and/or among the Parties in furtherance of this MOU.

5. The Parties acknowledge and agree that the Hospital currently owns the New Building Commission Parcel subject to the following (collectively, the “Hospital Imposed Encumbrances”): (a) the Covenants, as such term is defined in that certain Deed from West Virginia University Board of Governors, on behalf of West Virginia University, an agency or instrumentality of the State of West Virginia (the “University”), to West Virginia University Hospitals, Inc., dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167 (the “Hospital Vesting Deed”), (b) the exclusive use provision of the Hospital Vesting Deed which requires that the Hospital Property (including, without limitation, the New Building Commission Parcel) be used solely for medical and hospital purposes including, without limitation, parking, patient care, inpatient and outpatient services, clinical care, pharmacy services, childcare services, medical or administrative office space and/or other uses or services that are directly related or ancillary to the operation of an acute care hospital or the provision of medical care in the ordinary course of the Hospital’s business, and (c) the terms and provisions of that certain Right of First

Refusal Agreement by and between the Hospital and the University, dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, Page 196. The Parties acknowledge and agree that Swap and Exchange is conditioned upon the University's agreement to release the New Building Commission Parcel from the Hospital Imposed Encumbrances and deliver instrument(s) suitable to City and/or Building Commission accomplishing such release.

6. The Parties covenant and agree to take such actions, and to execute and deliver such instruments, documents and agreements, as may be necessary or proper to close the Swap and Exchange and to carry out the transactions contemplated in this MOU.

7. As an inducement for the City to enter into this MOU, and to consummate, and cause the Building Commission to consummate, the transactions contemplated herein, WVUH shall pay the outside legal fees and related expenses of Steptoe & Johnson, PLLC, which are actually incurred by the City and/or the Building Commission in connection with, or ancillary to, this MOU and the transactions contemplated herein, but not to exceed the sum of Thirty-Three Thousand Five Hundred and 00/100 Dollars (\$33,500.00).

8. The laws of the State of West Virginia, without resort to its conflicts of laws principles, shall govern the construction, interpretation, and validity of this MOU.

9. The Parties agree and consent to the exclusive jurisdiction of and to venue in the Circuit Court of Monongalia County, West Virginia, concerning, for, in connection with, in relation to, and/or with respect to any action, case, or other legal or equitable proceeding in any character, manner, nature, or way arising out of, concerning, involving, pertaining to, and/or relating to this MOU.

10. This MOU shall not be altered, amended, changed, enlarged, modified, restated, and/or supplemented in any character, manner, nature, or way except by a written instrument executed by the Parties.

11. In the event that any one or more of the provisions contained in this MOU, or the application thereof, in any circumstance, shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of such provision or provisions in any other circumstance shall not be affected or impaired thereby, and the remaining provisions contained in this MOU shall remain of full force and effect and be construed and interpreted as if such invalid, illegal, or unenforceable provision or provisions were never included. The provisions of this MOU shall be severable.

12. This MOU, together with the Exhibits hereto, comprises, constitutes, and contains the entire and final agreement of and among the Parties relating to the subject matter hereof, canceling, negating, superseding, and terminating any and all prior written and/or oral agreements between them with respect to subject matter hereof and is shall be deemed to be a complete and final expression and integration of their agreement.

13. The terms and provisions of this MOU shall bind and inure to the benefit of the Parties, their respective successors and assigns.

14. This MOU may be executed in two (2) or more counterparts, each and all of which counterparts shall be deemed to be an original and one (1) and the same instrument.

[Remainder of Page Left Blank Intentionally; Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

WEST VIRGINIA UNIVERSITY HOSPITALS, INC.,
a West Virginia non-profit corporation

By: _____
Michael A. Grace, EdD, MBA, FACHE,
its President and CEO

THE CITY OF MORGANTOWN, WEST VIRGINIA,
a municipal corporation and political subdivision of
the State of West Virginia

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
TO
MEMORANDUM OF UNDERSTANDING

Description of the Hospital Property

All of those certain lots or parcels of real estate, together with any buildings and improvements situate thereon and appurtenances thereunto belonging, situate, lying and being in the Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows:

TRACT ONE

Beginning at a 5/8" iron pin set with cap (Thrasher) being in the line of City of Morgantown Building Commission (Deed Book 1374 Page 630) and being a common corner of West Virginia University Hospitals Inc. (Deed Book 1688 Page 9) and West Virginia University Board of Governors; thence with two common lines of City of Morgantown Building Commission and West Virginia University Board of Governors

N 79° 47' 53" E, a distance of 140.92' to a rail road spike in concrete found; thence

S 12° 28' 20" E, a distance of 119.77' to a boat spike found being in the line of City of Morgantown Building Commission and being a common corner of West Virginia University Board of Governors and United Bank (Deed Book 1639 Page 433); thence with the common line of West Virginia University Board of Governors and United Bank

S 76° 35' 37" W, a distance of 151.44' to a boat spike found being in the line of West Virginia University Hospitals Inc. and being a common corner of United Bank and West Virginia University Board of Governors; thence with two common lines of West Virginia University Hospitals Inc. and West Virginia University Board of Governors

N 03° 55' 15" E, a distance of 33.81' to a 3/8" iron rod found; thence

N 11° 50' 05" W, a distance of 95.39' to the point of beginning and containing a total of 0.41 acres, more or less, being shown and depicted on that certain plat of survey entitled "Plat of Survey Showing Tax Map 06, Parcel 76.2 for West Virginia University Board of Governors," prepared by Aaron J. Rawe, P.S. No. 2312, of The Thrasher Group, Inc., dated May 2024, a copy of which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 178.

Together with any and all easements and rights of way appurtenant thereto, including without limitation,

The right-of-way upon that certain asphalt road now connecting Route No. 705 and West Virginia Medical Center Road, as shown upon a plat of a survey that was performed by H & B Surveying and Associates, Inc., dated (revised 9-20-82); a right-of-way upon the asphalt driveway abutting said 1.199 acre parcel and the herein described 0.41 acre parcel, (being the remaining part of an original 1.605 acre parcel) on the eastern

boundaries as shown upon said plat; and a right-of-way upon the driveway on the northern boundary of said original 1.605 acre parcel and a 1.586 acre parcel now or formerly of Morgan Manor, Inc. Said rights-of-way are for the ingress and egress of vehicular and pedestrian traffic onto said parcels and shall be non-exclusive.

TRACT TWO

Beginning at a 5/8" iron pin set with cap (Thrasher) in the lands of The West Virginia University Board of Governors (TM 06 PAR 74 DB 1552 PG 688) and being an existing lease area corner; thence with the existing lease area line and the two common lines of Morgantown Building Commission (TM 06 PAR 74.3 DB 1374 PG 630)

S 76° 52' 46" W, a distance of 234.50' (passing through a 3/4" iron rod found on line at 34.23' said rod being a common corner of Morgantown Building Commission and The West Virginia University Board of Governors) to a 1/2" iron rod found; thence

S 10° 08' 17" E, a distance of 75.74' to a 1" pipe found being the common corner of Morgantown Building Commission, City of Morgantown Building Commission (TM 06 PAR 76.3 DB 1374 PG 630), City of Morgantown Building Commission (TM 06 PAR 76.4 DB 1374 PG 630) and The West Virginia University Board of Governors; thence with two common lines of City of Morgantown Building Commission (TM 06 PAR 76.4) and the existing lease area line

S 79° 51' 48" W, a distance of 263.78' to a 3/8" iron rod found; thence

N 80° 34' 09" W, a distance of 53.26' to a point being in the eastern right-of-way edge of Van Voorhis Road and being a common corner of the existing lease area and City of Morgantown Building Commission; thence with five common lines of the existing lease area and the eastern right-of-way edge of Van Voorhis Road

N 09° 43' 27" W, a distance of 97.50' to a point; thence

N 87° 53' 15" W, a distance of 10.00' to a point; thence

N 02° 06' 45" E, a distance of 162.00' to a point; thence

S 87° 53' 15" E, a distance of 20.06' to a point; thence

N 02° 06' 45" E, a distance of 78.00' to a point being in the eastern right-of-way of Van Voorhis Road and being the corner of the existing lease area; thence leaving the eastern right-of-way edge of Van Voorhis Road with fifteen lines of the existing area though the lands of The West Virginia University Board of Governors

N 61° 39' 25" E, a distance of 40.77' to a 5/8" iron pin set with cap (Thrasher); thence

N 71° 27' 23" E, a distance of 37.40' to a 5/8" iron pin set with cap (Thrasher); thence

N 76° 59' 00" E, a distance of 199.79' to a 5/8" iron pin set with cap (Thrasher); thence

N 77° 23' 47" E, a distance of 47.00' to a 5/8" iron pin set with cap (Thrasher); thence

With a curve to the right having a radius of 78.92' an arc length of 36.19' and a chord bearing of N 89° 06' 02" E, a distance of 35.87' to a 5/8" iron pin set with cap (Thrasher); thence

S 71° 34' 29" E, a distance of 13.21' to a 5/8" iron pin set with cap (Thrasher); thence

With a curve to the right having a radius of 89.56' an arc length of 17.90' and a chord bearing of S 59° 55' 19" E, a distance of 17.87' to a 5/8" iron pin set with cap (Thrasher); thence

S 51° 20' 11" E, a distance of 15.48' to a 5/8" iron pin set with cap (Thrasher); thence

S 71° 29' 13" E, a distance of 15.31' to a 5/8" iron pin set with cap (Thrasher); thence

S 04° 21' 34" E, a distance of 21.90' to a 5/8" iron pin set with cap (Thrasher); thence

S 87° 19' 39" E, a distance of 77.02' to a 5/8" iron pin set with cap (Thrasher); thence

S 17° 55' 24" E, a distance of 7.42' to a 5/8" iron pin set with cap (Thrasher); thence

S 13° 06' 20" E, a distance of 87.66' to a 5/8" iron pin set with cap (Thrasher); thence

S 09° 52' 01" E, a distance of 45.18' to a 5/8" iron pin set with cap (Thrasher); thence

S 11° 46' 04" E, a distance of 68.55' to the point of beginning and containing a total of 3.90 acres, more or less, being shown and depicted on that certain plat of survey entitled "Plat of Survey Showing Existing Lease Area Boundary for West Virginia University Board of Governors," prepared by Aaron J. Rawe, P.S. No. 2312, of The Thrasher Group, Inc., dated September 2024, a copy of which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 180.

And being the same real estate as conveyed from West Virginia University Board of Governors, on behalf of West Virginia University, an agency or instrumentality of the State of West Virginia, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, by Deed dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167.

EXHIBIT B
TO
MEMORANDUM OF UNDERSTANDING

Description of the Building Commission Property

All of the following described parcels of real estate and any interests therein, together with any appurtenances located thereon, situate, lying, and being in the Morgantown Corporation District, Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, more particularly bounded and described as follows:

Parcel A

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with three lines through property of West Virginia University;

N. 10° 27' 00" W. 86.17 feet to an iron pin,
S. 76° 33' 45" W. 200.27 feet to an iron pin,
S. 10° 27' 00" E. 75.74 feet to an iron pipe;

Thence, with a line being a boundary between West Virginia University and the Monongalia County Commission, N. 79° 33' 00" E. 200.00 feet to the place of beginning, said parcel containing 0.3717 acres, as shown on a plat dated October 18, 2006, prepared by Dempsey Engineering Co.

This conveyance is made subject to all restrictions, rights of way, easements, covenants and conditions of record as contained in the chain of title.

The above described real property was conveyed to the Morgantown Building Commission by deed dated December 5, 2006, from the West Virginia University Board of Governors, on behalf of West Virginia University, of record in the Office of the Clerk of The County Commission of Monongalia County in Deed Book No. 1339, at page 408, and by a Corrective Deed dated September 30, 2008, from the West Virginia University Board of Governors, on behalf of West Virginia University, recorded in the Office of the Clerk of The County Commission of Monongalia County in Deed Book No. 1374, at page 616.

Parcel B

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with a line being a boundary between West Virginia University and the Monongalia County Commission S 79° - 33' — 00" W a distance of 200.00 feet to an iron pipe; thence with three lines through the property of the Monongalia County Commission:

S 13° - 23' — 18" E a distance of 79.63 feet to an iron pin;

N 77° - 56' — 38" E a distance of 198.02 feet to an iron pin;

N 12° - 01' — 00" W a distance of 74.01 feet to the place of beginning with said parcel containing 0.3508 Acres, and shown on the attached Exhibit as "Parcel B". Said real estate being a part of Parcel 76 as shown on Morgantown Corporation Tax Map 6.

Parcel C

Beginning at an iron pipe which is a common corner to parcels A & B and also a common corner to lands of West Virginia University and the Monongalia County Commission; thence with a line separating West Virginia University and the Monongalia County Commission with two calls:

S 79° - 33' — 00" W a distance of 263.77 feet to an iron pin;

N 80° - 37' — 30" W a distance of 51.16 feet to a RR spike. Said point being on the existing Right-of-Way line of Van Voorhis Road also referred to as West Virginia Route 705; thence with the Right-of-Way of Route 705 S 4° - 11' — 57" W a distance of 49.81 feet to an iron pin, said pin being a corner of West Virginia University property; thence with a line of said West Virginia University property with two calls:

S 80° - 46' — 04" E a distance of 53.23 feet to an iron pin;

N 79° - 34' — 58" E a distance of 109.00 feet to a RR spike being a corner of West Virginia University and Solomon properties; thence with two lines of Solomon;

N 79° - 30' — 22" E a distance of 141.00 feet to a PK nail in asphalt pavement

S. 12° - 43' - 19" E a distance of 119.70 feet to a bolt being the common corner of Solomon and Centra Bank; thence with three lines of Centra Bank;

S 12° - 43' — 19" E a distance of 83.20 feet to an iron pin;

S 1° - 48' - 48" W a distance of 228.15 feet to an iron pin;

S 49° - 27' — 39" W a distance of 32.24 feet to an iron pin; said iron pin being a corner of Centra Bank and on the Right-of-Way of Elmer Prince Drive; thence with the Right-of-Way of Elmer Prince Drive S 88° - 16' — 36" E a distance of 72.06 feet to an iron pin; thence leaving the Right-of-Way of Elmer Prince Drive N 41° - 31' — 13" W a distance of 33.20 feet to a point on a concrete curb said point being the end of a radius; thence with a new boundary of an existing roadway on properties of the Monongalia County Commission with three calls:

N 1° - 39' — 44" E a distance of 230.27 feet to a PK nail in asphalt pavement;

N 12° - 03' — 26" W a distance of 172.72 feet to an iron pin also being a corner to parcel B, which is shown on the attached Exhibit; thence with parcel B and said roadway N 13° - 23' — 18" W a distance of 79.63 feet to the place of beginning, said parcel containing 0.6431 Acres, and shown on the attached Exhibit as "Parcel C". And being parts of parcels 74.2 and 76 as shown on Morgantown Corporation Tax Map 6.

And both of the above Parcels B and C being the real property conveyed to the Morgantown Building Commission, by The County Commission of Monongalia County pursuant to a deed dated

November 22, 2006, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1339 at Page 403.

The above-described real estate is conveyed subject to all exceptions, reservations, conditions and rights-of-way as heretofore imposed upon said realty by The County Commission of Monongalia County and its predecessors in title, including a right-of-way granted unto Steven B. Solomon and Dan L. Shearer, III, by agreement dated June 4, 1990, and of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1012 at Page 213.

The above-described real estate is further conveyed with the understanding that upon the termination of the aforementioned right-of-way agreement with Steven B. Solomon and Dan L. Shearer, III, the Morgantown Building Commission, as Grantee, by and through the City of Morgantown, shall maintain the vehicular travelway addressed in the Steven B. Solomon and Dan L. Shearer, III, agreement. Also, it is understood that with the recording of this deed, the City of Morgantown shall begin maintaining the 375 foot long north/south roadway which intersects with Elmer Prince Drive and is shown on the attached Exhibit as part of Parcel C.

EXHIBIT C
TO
MEMORANDUM OF UNDERSTANDING

Description of the New Building Commission Parcel

A CERTAIN TRACT OR PARCEL OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a 1" iron pipe found at a corner common to West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 688), Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), Morgantown Building Commission (Tax Map 6 Parcel 74.3, Deed Book 1374 Page 630) and Morgantown Building Commission (Tax Map 6 Parcel 76.3, Deed Book 1374 Page 630), from which a ½" iron rebar found at a corner to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3) bears N 10° 08' 17" W 58.32', thence leaving said Morgantown Building Commission (Parcel 74.3 & 76.3) and with said Morgantown Building Commission (Parcel 76.4);

S 79° 51' 48" W 255.69' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said Morgantown Building Commission (Parcel 76.4) and through said West Virginia University Board of Governors (Parcel 74);

N 86° 19' 16" W 27.03' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

N 80° 34' 09" W 33.98' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said Morgantown Building Commission (Parcel 74.3) and with said West Virginia Route 705 (Van Voorhis Road);

N 09° 43' 27" W 43.47' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said West Virginia University Board of Governors (Parcel 74) for five (5) lines;

By a curve to the left having a radius of 38.50', an arc length of 15.25', and a chord bearing of S 74° 47' 46" E 15.15' to a point, thence;

S 86° 08' 46" E 6.97' to a point, thence;

S 86° 09' 56" E 149.86' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 85° 01' 08" E 59.52' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown

Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

S 10° 08' 17" E 17.42' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being part of the real estate as conveyed from West Virginia University Board of Governors, on behalf of West Virginia University, an agency or instrumentality of the State of West Virginia, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, by Deed dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167.

EXHIBIT D
TO
MEMORANDUM OF UNDERSTANDING

Description of the New Hospital Parcel

ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West Virginia University Hospitals, Inc. (Parcel 76.1) for two (2) lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74) and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

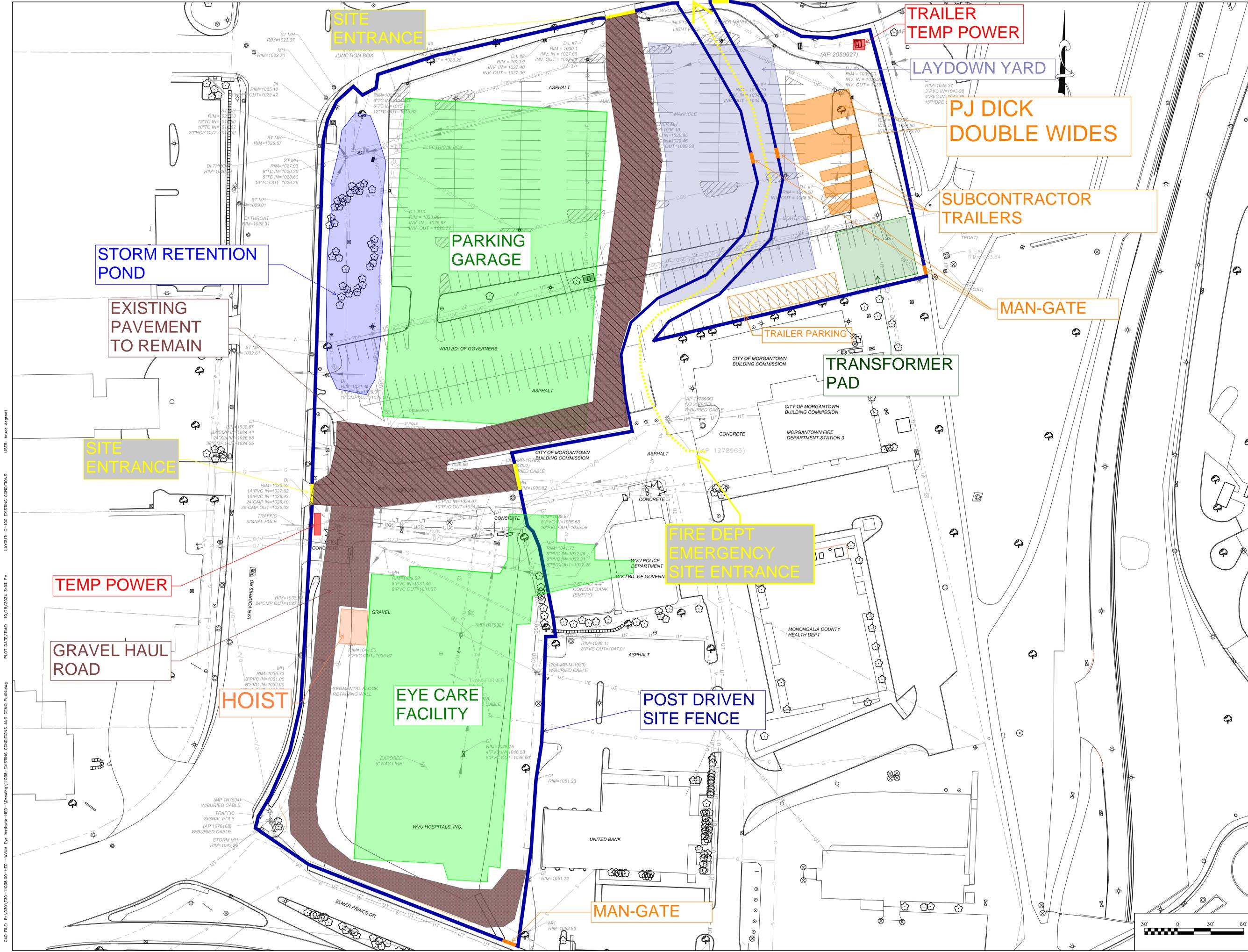
S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being part of the real estate as conveyed The City of Morgantown Building Commission, a West Virginia public commission, by the following instruments of record: (1) Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated December 5, 2006 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1339, at page 408, (2) Corrective Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated September 30, 2008 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1374, at page 616, and (3) Deed from The County Commission of Monongalia County, West Virginia dated November 22, 2006 and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1339 at Page 403.

EXHIBIT E
TO
MEMORANDUM OF UNDERSTANDING

Plat of Relocated Fire Station Access Road and Pedestrian Bridge

EXHIBIT F
TO
MEMORANDUM OF UNDERSTANDING
Plat of Temporary Construction Access Road



Item 11A
 USER: Bruce degnort
 LAYOUT: C-100 EXISTING CONDITIONS
 PLOT DATE/TIME: 10/15/2024 3:04 PM
 CAD FILE: R:\320\130-11036-00-HED - WVUM Eye Institute-HED - Opening\11036-EXISTING CONDITIONS AND DEMO PLAN.dwg
 2023-WV002-001

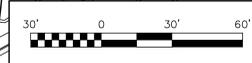


EXHIBIT G
TO
MEMORANDUM OF UNDERSTANDING
Partial Release and Subordination Agreement

PARTIAL RELEASE AND SUBORDINATION AGREEMENT

WESBANCO BANK, INC.,

TO

MORGANTOWN BUILDING COMMISSION and
THE CITY OF MORGANTOWN,

WesBanco Bank, Inc. ("Secured Party"), for good and valuable consideration, the adequacy, receipt, and sufficiency of all of which are acknowledged, for the benefit of and in favor of Morgantown Building Commission and The City of Morgantown (collectively, the "Grantor"), and Grantor's respective successors and assigns, hereby:

1. cancels, discharges, terminates and releases the lien, encumbrance and security interest created and evidenced by that certain Credit Line Deed of Trust, Fixture Filing and Security Agreement executed by Morgantown Building Commission and The City of Morgantown to Charles M. Johnson, Trustee, dated the 1st day of June, 2013 and made effective June 28, 2013, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia (the "Clerk's Office") in Trust Deed Book No. 1951, at Page 142 (the "Deed of Trust") to the limited extent, and only to the limited extent, that the Deed of Trust constitutes an encumbrance, lien, or security interest against or on the real estate described on Exhibit A attached hereto and incorporated herein by this reference (the "Released Property"), and

2. subjects and subordinates the Deed of Trust to and in favor of that certain Easement Agreement by and between West Virginia University Hospitals, Inc., on one hand, and Grantor, on the other hand, dated _____, 2025 and to be recorded in the aforesaid Clerk's Office immediately prior to the recordation of this Partial Release and Subordination Agreement (the "Easement Agreement"), with the intent that and to the effect that (a) the Deed of Trust shall be deemed to have been made, entered into, executed, acknowledged, delivered, and recorded in the Clerk's Office subsequent in time to the Easement Agreement, and (b) neither the Easement Agreement nor any of the easements or rights of way created, dedicated, established, or granted by or pursuant to such Easement Agreement shall be affected, cancelled, disturbed, extinguished, foreclosed, released, relinquished, or terminated, in any character, manner, or nature, by the exercise of any remedies or rights, including, without limitation, the remedy or right of foreclosure, pursuant to the Deed of Trust.

In all other respects, and as to all other real property other than the Released Property, the above-described Deed of Trust shall remain in full force and effect.

[Remainder of Page Left Blank Intentionally; Signature Page to Follow]

IN WITNESS WHEREOF, WesBanco Bank, Inc. has executed and delivered this Partial Release and Subordination Agreement as of the _____ day of _____, 2025.

WESBANCO BANK, INC.

By: _____
Name: _____
Its: _____

STATE OF WEST VIRGINIA,
COUNTY OF _____, TO-WIT:

I, _____, a Notary Public in and for the County and State aforesaid, do certify that _____, the _____, of WesBanco Bank, Inc. has executed the foregoing instrument for and on behalf of said Bank under authority duly granted and for the purposes therein contained.

Given under my hand this _____ day of _____, 2025.

Notary Public

My commission expires: _____

This Instrument was prepared by:
Seth Wilson, Esq.
BOWLES RICE LLP
125 Granville Square, Suite 400
Morgantown, WV 26505-1720
(304) 285-2500

17329833.1 W7775/00060

**EXHIBIT A
TO
PARTIAL RELEASE AND SUBORDINATION AGREEMENT**

Description of Released Property

ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West Virginia University Hospitals, Inc. (Parcel 76.1) for two (2) lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74 and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

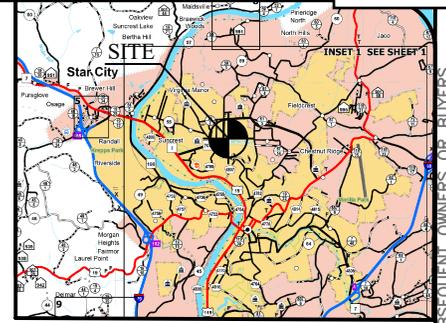
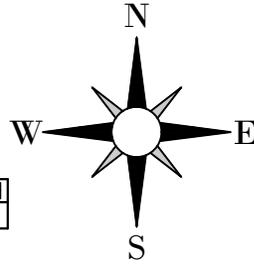
S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres, more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being part of the real estate as conveyed The City of Morgantown Building Commission, a West Virginia public commission, by the following instruments of record: (1) Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated December 5, 2006 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1339, at page 408, (2) Corrective Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated September 30, 2008 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1374, at page 616, and (3) Deed from The County Commission of Monongalia County, West Virginia dated November 22, 2006 and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1339 at Page 403.

EXHIBIT H
TO
MEMORANDUM OF UNDERSTANDING
Plat of Reciprocal Utility Easement Area

NOTE: THE TRACT SHOWN BEING A PART OF THE SAME LANDS CONVEYED TO WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS FROM M&J PROPERTY HOLDINGS, LLC AS RECORDED IN DEED BOOK 1552 PAGE 688 AND MORGANTOWN BUILDING COMMISSION AS RECORDED IN DEED BOOK 1374 PAGE 630 AT THE OFFICE OF THE CLERK, MONONGALIA COUNTY, WEST VIRGINIA.

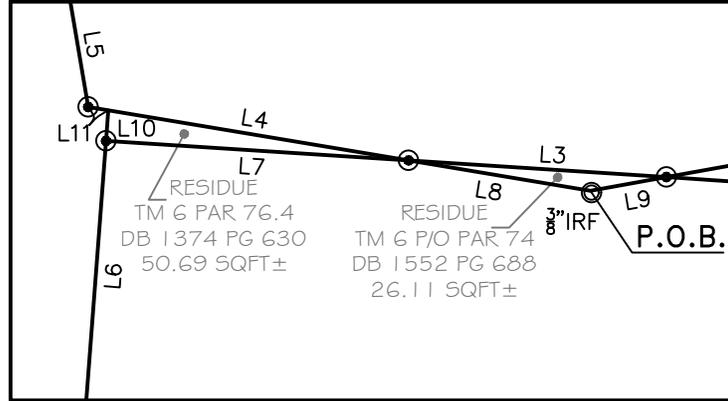


| CURVE | RADIUS | ARC LENGTH | CHORD BEARING | CHORD LENGTH |
|-------|--------|------------|---------------|--------------|
| C1 | 38.50' | 15.25' | S 74°47'46" E | 15.15' |

| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 86°08'46" E | 6.97' |
| L2 | S 10°08'17" E | 17.42' |
| L3 | N 86°19'16" W | 27.03' |
| L4 | N 80°34'09" W | 33.98' |
| L5 | N 09°43'27" W | 43.47' |
| L6 | N 04°21'52" E | 46.54' |
| L7 | S 86°19'16" E | 31.74' |
| L8 | S 80°34'09" E | 19.28' |
| L9 | N 79°51'48" E | 8.09' |
| L10 | N 04°21'52" E | 3.19' |
| L11 | N 80°34'09" W | 2.12' |

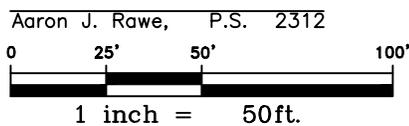
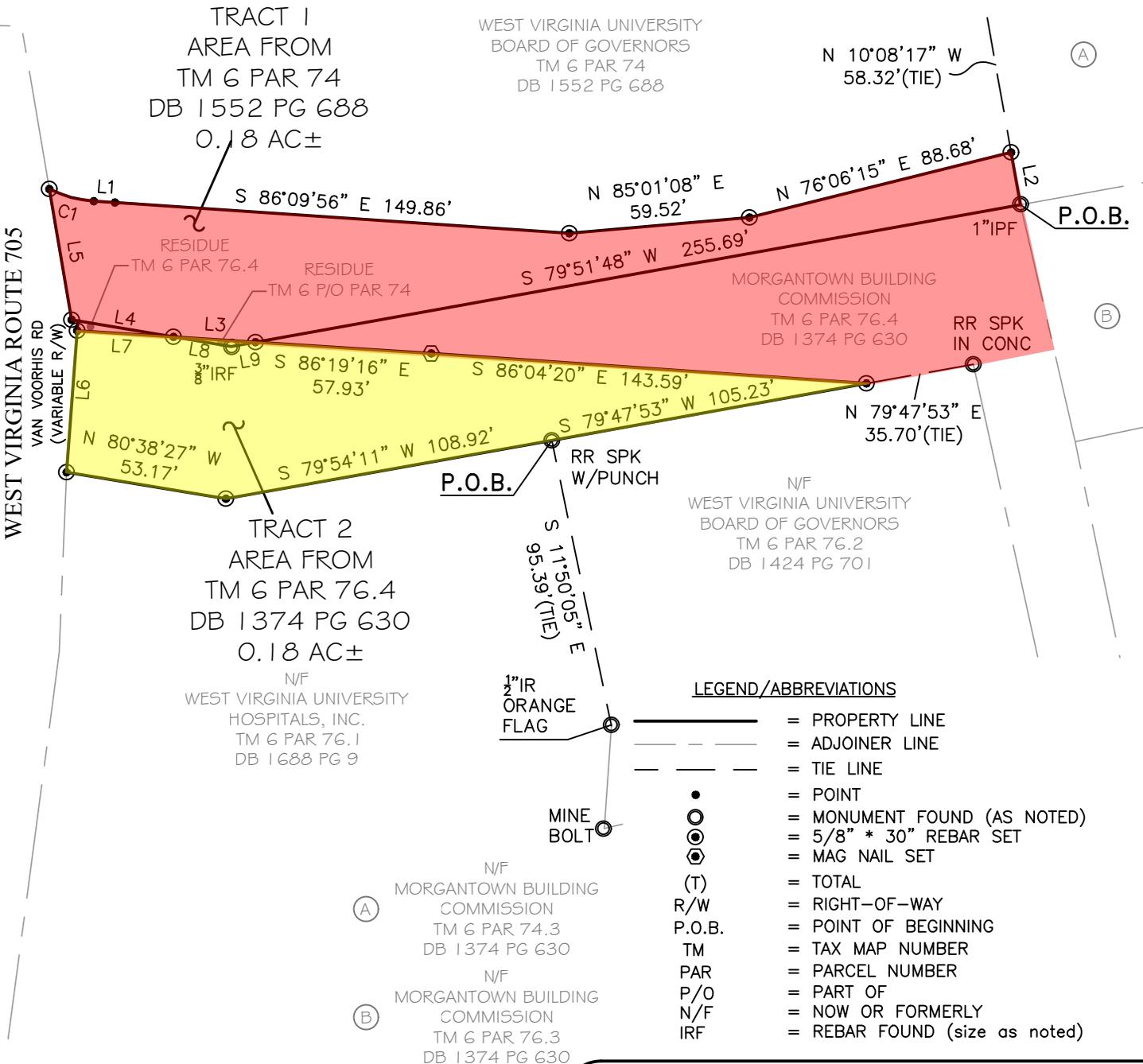
BASIS OF BEARING
WV STATE PLANE NORTH
NAD 83(2011)

VICINITY MAP
NOT TO SCALE



DETAIL
SCALE 1"=20'

- (Post Swap) Morgantown Building Commission Property
- WVU Hospital, Inc. Property



T30-11038

PLAT OF SURVEY FOR

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS

SHOWING
PROPOSED LAND SWAP
OF THE

MORGANTOWN 7TH WARD CORP WEST VIRGINIA
MONONGALIA COUNTY JULY 2024

THRASHER THE THRASHER GROUP, INC.
600 WHITE OAKS BLVD.
BRIDGEPORT, WV 26330
PHONE 304-624-4108
www.thrashergroup.com

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CAD FILE: R:\030\T30-11038.00-HED -WVUM Eye Institute-HED -Survey\Property\Road-Parcel-Revision.dwg PLOT DATE/TIME: 7/29/2024 - 3:19pm LAYOUT: Plat USER: cirvine

THIS SURVEY IS NOT VALID WITHOUT ORIGINAL BLUE SIGNATURE AND SEAL. DECLARATIONS MADE HEREIN ON THE DATE INDICATED ARE TO THE OWNERS(S) OR BUYER(S) LISTED BELOW AND ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS OR BUYERS.

THIS DEED OF EXCHANGE, Made this the ____ day of _____ 2025 by and between WEST VIRGINIA UNIVERSITY HOSPITALS, INC. a West Virginia non-profit corporation, party of the first part (“WVUH”), and MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, party of the second part (the “Building Commission”).

WHEREAS, WVUH and the Building Commission own various lots or parcels of contiguous real estate in the vicinity of West Virginia State Route 705, also known as Van Voorhis Road, in the Seventh Ward, City of Morgantown, Monongalia County, West Virginia;

WHEREAS, WVUH and the Building Commission wish to exchange property for the purpose of altering or modifying the common boundary line between the property owned by WVUH and the property owned by the Building Commission.

WITNESSETH: That for and in consideration of the total sum of Ten Dollars (\$10.00), cash in hand paid, the receipt of which is hereby acknowledged, WVUH does hereby grant and convey, with Covenants of SPECIAL WARRANTY, unto the Building Commission, all of that certain lot or parcel of real estate, together with any buildings and improvements situate thereon and appurtenances thereunto belonging, situate, lying and being in the Seventh Ward, City of Morgantown, Monongalia County, West Virginia, and more particularly described by its metes and bounds as follows (the “New Building Commission Parcel”):

Beginning at a 1” iron pipe found at a corner common to West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 688), Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), Morgantown Building Commission (Tax Map 6 Parcel 74.3, Deed Book 1374 Page 630) and Morgantown Building Commission (Tax Map 6 Parcel 76.3, Deed Book 1374 Page 630), from which a ½” iron rebar found at a corner to said West Virginia University Board of Governors (Parcel 74) and said

Morgantown Building Commission (Parcel 74.3) bears N 10° 08' 17" W 58.32', thence leaving said Morgantown Building Commission (Parcel 74.3 & 76.3) and with said Morgantown Building Commission (Parcel 76.4);

S 79° 51' 48" W 255.69' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said Morgantown Building Commission (Parcel 76.4) and through said West Virginia University Board of Governors (Parcel 74);

N 86° 19' 16" W 27.03' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

N 80° 34' 09" W 33.98' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said Morgantown Building Commission (Parcel 74.3) and with said West Virginia Route 705 (Van Voorhis Road);

N 09° 43' 27" W 43.47' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said West Virginia University Board of Governors (Parcel 74) for five (5) lines;

By a curve to the left having a radius of 38.50', an arc length of 15.25', and a chord bearing of S 74° 47' 46" E 15.15' to a point, thence;

S 86° 08' 46" E 6.97' to a point, thence;

S 86° 09' 56" E 149.86' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 85° 01' 08" E 59.52' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

S 10° 08' 17" E 17.42' to the point of beginning, containing 0.18 acres, more or less, as the same is shown and identified as "Tract 1" on that certain plat entitled "Plat of Survey for West Virginia University Hospitals, Inc. Showing Proposed Land Swap" prepared by Aaron J. Rawe, P.S. No. 2312 of The Thrasher Group, Inc., dated July 2024, attached as Exhibit A hereto and incorporated herein by this reference (the "Exchange Plat").

The above-described New Building Commission Parcel being part of the real estate as conveyed from West Virginia University Board of Governors, on behalf of West Virginia

University, an agency or instrumentality of the State of West Virginia, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, by Deed dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167.

The conveyance of the New Building Commission Parcel is made subject to all exceptions, reservations, easements, restrictions, rights-of-way, covenants and conditions as contained in prior deeds of conveyance and other instruments of record for said real estate or as would be apparent upon a physical inspection of the real estate or upon an accurate survey thereof, to the extent such exceptions, reservations, easements, restrictions, rights-of-way, covenants and conditions remain in effect and enforceable as of the date of this instrument, and the covenant of special warranty contained in this Deed of Exchange is limited and qualified by all of the same.

WVUH warrants that it has no knowledge or reason to believe that the New Building Commission Parcel or its substrata contains an underground storage tank which is regulated by the provisions of the West Virginia Underground Storage Tank Act, W. Va. Code § 22-17-19.

The New Building Commission Parcel is assessed upon the land books of Monongalia County, West Virginia, for the year 2024 in the Seventh Ward, City of Morgantown, as part of the following:

West Virginia University Board of Governors
Map 6, Parcel 74

DECLARATION OF CONSIDERATION OR VALUE

The undersigned, WVUH, does hereby declare, under penalty of fine and imprisonment, that the total consideration paid for the New Building Commission Parcel is less than \$100.00

and, therefore, the conveyance is exempt from the West Virginia excise tax on the privilege of transferring real estate.

AND FURTHER WITNESSETH: That for and in consideration of the exchange of real estate herein described, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Building Commission does hereby grant and convey, with Covenants of SPECIAL WARRANTY, unto WVUH the following described tract or parcel of real estate, together with the buildings and improvements situate thereon and appurtenances thereunto belonging, situate, lying and being in the Seventh Ward, City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows (the "New Hospital Parcel"):

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West Virginia University Hospitals, Inc. (Parcel 76.1) for two (2) lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74 and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

S 79° 47' 53" W 105.23' to the point of beginning, containing 0.18 acres, more or less, as the same is shown and identified as "Tract 2" on the Exchange Plat.

The above-described New Hospital Parcel is part of the real estate as conveyed the Building Commission by the following instruments of record: (1) Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated December 5, 2006 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1339, at page 408, (2) Corrective Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated September 30, 2008 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1374, at page 616, and (3) Deed from The County Commission of Monongalia County, West Virginia dated November 22, 2006 and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1339 at Page 403.

The conveyance of the New Hospital Parcel is made subject to all exceptions, reservations, easements, restrictions, rights-of-way, covenants and conditions as contained in prior deeds of conveyance and other instruments of record for said real estate or as would be apparent upon a physical inspection of the real estate or upon an accurate survey thereof, to the

extent such exceptions, reservations, easements, restrictions, rights-of-way, covenants and conditions remain in effect and enforceable as of the date of this instrument, and the covenant of special warranty contained in this instrument is limited and qualified by all of the same.

The Building Commission warrants that it has no knowledge or reason to believe that the New Hospital Parcel or its substrata contains an underground storage tank which is regulated by the provisions of the West Virginia Underground Storage Tank Act, W. Va. Code § 22-17-19.

The New Hospital Parcel is assessed upon the land books of Monongalia County, West Virginia, for the year 2024 in the Seventh Ward, City of Morgantown, as part of the following:

Morgantown Building Commission
Map 6, Parcel 76.4

DECLARATION OF CONSIDERATION OR VALUE

The undersigned, the Building Commission, does hereby declare, under penalty of fine and imprisonment, that the total consideration paid for the New Hospital Parcel is less than \$100.00 and, therefore, the conveyance is exempt from the West Virginia excise tax on the privilege of transferring real estate.

WVUH and the Building Commission acknowledge and agree that the conveyance of the New Building Commission Parcel and the New Hospital Parcel is subject to the terms and provisions of that certain Easement Agreement by and between WVUH and the Building Commission, dated as of even date herewith and to be recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia immediately after the recordation of this Deed of Exchange.

[Remainder of Page Left Blank Intentionally; Signature Pages to Follow]

WITNESS the following signature and seal:

WEST VIRGINIA UNIVERSITY HOSPITALS,
INC.,
a West Virginia non-profit corporation

By: _____
Michael A. Grace, EdD, MBA, FACHE,
is President and CEO

STATE OF WEST VIRGINIA
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2025, by Michael A. Grace, the President and CEO of WEST VIRGINIA UNIVERSITY HOSPITALS, INC., a West Virginia non-profit corporation, for and on behalf of said non-profit corporation under authority duly granted and for the purposes therein contained.

My commission expires: _____.

[Notarial Seal]

Notary Public

WITNESS the following signature and seal:

MORGANTOWN BUILDING COMMISSION,
a public corporation and municipal building
commission,

By: _____
Name: _____
Title: _____

STATE OF WEST VIRGINIA
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2025, by _____, the _____ of MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, for and on behalf of said commission under authority duly granted and for the purposes therein contained.

My commission expires: _____.

[Notarial Seal]

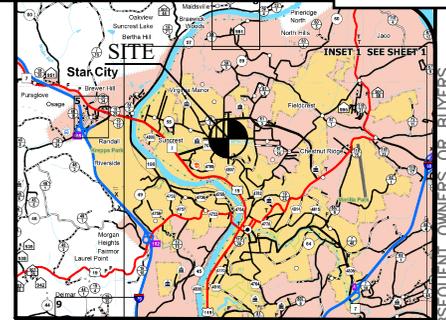
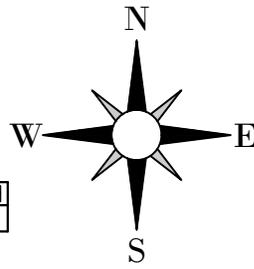
Notary Public

This instrument prepared without the benefit of a title examination by:
Seth Wilson, Esq.
BOWLES RICE LLP
125 Granville Square, Suite 400
Morgantown, West Virginia 26501
(304) 285-2500

17340481 v1 / W7775.00060

EXHIBIT A
Exchange Plat

NOTE: THE TRACT SHOWN BEING A PART OF THE SAME LANDS CONVEYED TO WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS FROM M&J PROPERTY HOLDINGS, LLC AS RECORDED IN DEED BOOK 1552 PAGE 688 AND MORGANTOWN BUILDING COMMISSION AS RECORDED IN DEED BOOK 1374 PAGE 630 AT THE OFFICE OF THE CLERK, MONONGALIA COUNTY, WEST VIRGINIA.

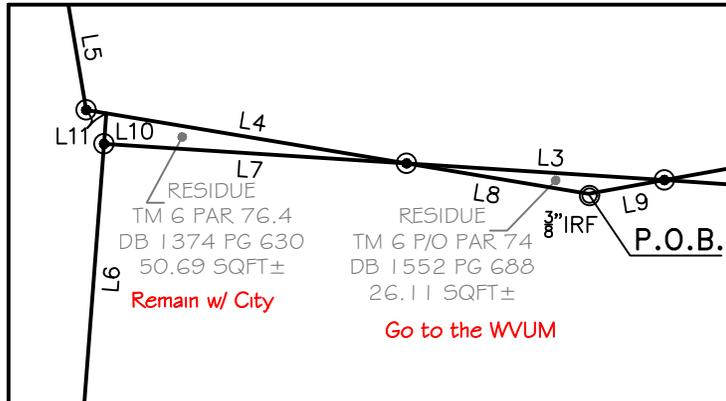


| CURVE | RADIUS | ARC LENGTH | CHORD BEARING | CHORD LENGTH |
|-------|--------|------------|---------------|--------------|
| C1 | 38.50' | 15.25' | S 74°47'46" E | 15.15' |

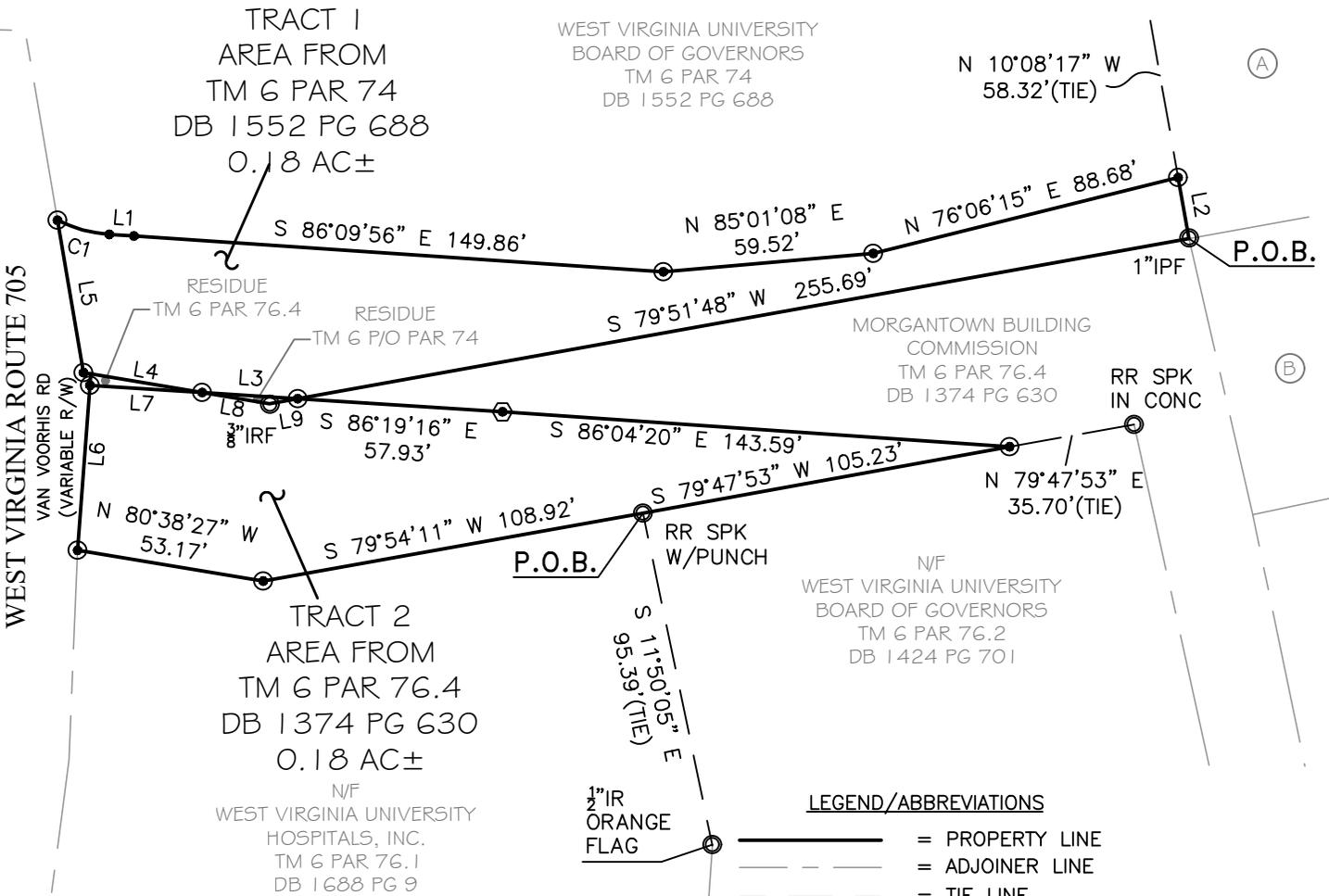
| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 86°08'46" E | 6.97' |
| L2 | S 10°08'17" E | 17.42' |
| L3 | N 86°19'16" W | 27.03' |
| L4 | N 80°34'09" W | 33.98' |
| L5 | N 09°43'27" W | 43.47' |
| L6 | N 04°21'52" E | 46.54' |
| L7 | S 86°19'16" E | 31.74' |
| L8 | S 80°34'09" E | 19.28' |
| L9 | N 79°51'48" E | 8.09' |
| L10 | N 04°21'52" E | 3.19' |
| L11 | N 80°34'09" W | 2.12' |

BASIS OF BEARING
WV STATE PLANE NORTH
NAD 83(2011)

VICINITY MAP
NOT TO SCALE

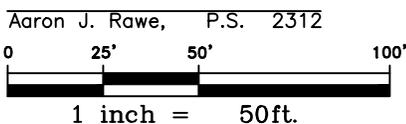


DETAIL
SCALE 1"=20'



LEGEND/ABBREVIATIONS

- = PROPERTY LINE
- - - = ADJOINER LINE
- - - = TIE LINE
- = POINT
- = MONUMENT FOUND (AS NOTED)
- = 5/8" * 30" REBAR SET
- = MAG NAIL SET
- (T) = TOTAL
- R/W = RIGHT-OF-WAY
- P.O.B. = POINT OF BEGINNING
- TM = TAX MAP NUMBER
- PAR = PARCEL NUMBER
- P/O = PART OF
- N/F = NOW OR FORMERLY
- IRF = REBAR FOUND (size as noted)



T30-11038

THRASHER THE THRASHER GROUP, INC.
600 WHITE OAKS BLVD.
BRIDGEPORT, WV 26330
PHONE 304-624-4108
www.thrashergroup.com

PLAT OF SURVEY FOR
WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS

SHOWING
PROPOSED LAND SWAP
OF THE

MORGANTOWN 7TH WARD CORP WEST VIRGINIA
MONONGALIA COUNTY JULY 2024

CAD FILE: R:\030\T30-11038.00-HED -WVUM Eye Institute-HED -Survey\Property\Road-Parcel-Revision.dwg PLOT DATE/TIME: 7/29/2024 - 3:19pm LAYOUT: Plat USER: cirvine

THIS SURVEY IS NOT VALID WITHOUT ORIGINAL BLUE SIGNATURE AND SEAL. DECLARATIONS MADE HEREIN ON THE DATE INDICATED ARE TO THE OWNERS(S) OR BUYER(S) LISTED BELOW AND ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS OR BUYERS.

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2025, by and between WEST VIRGINIA UNIVERSITY HOSPITALS, INC., a West Virginia non-profit corporation (“WVUH”), and MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission (the “Building Commission”).

WHEREAS, WVUH is the owner of certain real estate located and situate in the Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, being more particularly described as Exhibit A attached hereto and incorporated herein by this reference, being identified for real estate tax purposes as a portion of Tax Map 6, Parcel 76.2 and a portion of Tax Map 6, Parcel 74 (collectively, the “WVUH Property”).

WHEREAS, the Building Commission owns certain real property located adjacent to and contiguous with the WVUH Property, being more particularly described as Exhibit B attached hereto and incorporated herein by this reference, and being identified for real estate tax purposes as Tax Map 6, Parcel 74.3, Tax Map 6, Parcel 76.3 and Tax Map 6, Parcel 76.4 (collectively, the “Building Commission Property”).

NOW, THEREFORE, that, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt, sufficiency, and adequacy of all of which are hereby acknowledged by WVUH and the Building Commission (each, a “Party” and collectively, the “Parties”), intending to be legally bound hereby, agree as follows:

1. Definitions. The Parties hereby covenant and agree that for the purposes of this Agreement, the following defined terms shall have the following meanings and definitions:

(a) “Agreement” shall mean this easement agreement and any and all amendments and modifications of and supplements to the same.

(b) “Clerk’s Office” shall mean the Office of the Clerk of the County Commission of Monongalia County, West Virginia.

(c) “Liabilities and Losses” shall mean any and all liabilities, losses, damages (compensatory, punitive, incidental, consequential, foreseeable, unforeseeable, liquidated, unliquidated, or otherwise), costs, expenses, penalties, injuries, assessments, liens, fines, impositions, demands, claims, actions, causes of action, and judgments, including, without limitation, fees and expenses of counsel, paralegals, accountants, consultants, and experts, of any and every kind and nature, whenever incurred, sustained, suffered, or expended, by a Party to this Agreement accruing from, concerning, pertaining to, in relation to, in connection with, or resulting from the matter referenced in relation thereto.

(d) “Lines and Related Improvements” shall collectively mean conduits, connection boxes, facilities, lines, meters, pedestals, pull-boxes, systems, transformers, wires, and any, every, and all additions, alterations, appliances, appurtenances, attachments, connections, devices, equipment, facilities, fittings, leads, instrumentalities, markers, modifications, systems, or structures thereof or thereto advisable, ancillary, appropriate, convenient, incidental, necessary, requisite, or useful to carrying, controlling, delivering, distributing, transmitting, or transporting electric, natural gas, water sewer, storm water, communications, data, electric, telecommunications, telephone, and similar utilities, whether by currently existing technology or subsequently developed technology, foreseeable or unforeseeable.

(e) “Roadbed Improvements” means asphalt, concrete, fill material, gravel, shale, stone, and similar and like-kind materials, curbing, directional-signage, guardrails, islands, lighting fixtures, median

strips, medians, speed bumps, speed humps, striping, traffic-flow signage, and similar and like-kind improvements ancillary, appropriate, convenient, incidental, necessary, required, and/or useful to building, constructing, extending, improving, inspecting, installing, laying, maintaining, operating, re-constructing, re-building, re-extending, re-improving, reinstalling, re-laying, removing, repairing, and replacing drives and/or roadbeds for bicycle, pedestrian, and vehicular use.

2. Grant and Purposes of Relocated Fire Station Access Road Easement.

(a) The Building Commission does hereby grant, bargain, sell, and convey unto WVUH, its successors and assigns, as an appurtenance to the WVUH Property, a perpetual, non-exclusive easement and right of way in, on, over, under, across, and through a portion of the Building Commission Property, described as Parcel D on Exhibit B, for the purposes of (i) pedestrian and vehicular access, ingress, egress, and regress between, from, and to the WVUH Property and West Virginia Route 705 (via Van Voorhis Road), and (ii) building, constructing, extending, improving, inspecting, installing, laying, maintaining, operating, re-constructing, re-building, re-extending, re-improving, reinstalling, re-laying, removing, repairing, replacing, and upkeeping Roadbed Improvements, (the “Relocated Fire Station Access Road Easement”). For the avoidance of doubt, the Relocated Fire Station Access Road Easement granted to WVUH pursuant to this Paragraph 2(a) is subject to the following conditions: (i) the Relocated Fire Station Access Road Easement shall remain available at all times to be used and/or traversed by fire apparatus, consistent with its status as an access point to critical emergency services; and (ii) WVUH shall provide prior notice of any entry for Roadbed Improvements and shall only make such entry, and perform such work, upon the approval of the Building Commission, which shall not be unreasonably delayed, conditioned, or denied.

(b) For the avoidance of doubt, the Building Commission hereby retains the right to use and enjoy the Relocated Fire Station Access Road Easement for (i) pedestrian and vehicular access, ingress, egress, and regress between, from, and to the Building Commission Property and West Virginia Route 705 (via Van Voorhis Road), and (ii) building, constructing, extending, improving, inspecting, installing, laying, maintaining, operating, re-constructing, re-building, re-extending, re-improving, reinstalling, re-laying, removing, repairing, replacing, and upkeeping Roadbed Improvements.

(c) WVUH, at WVUH’s sole cost and expense, shall build and construct a new access road on and about that portion of the Building Commission Property described as Parcel D on Exhibit B in accordance with the plans and specifications approved by The City of Morgantown (the “Relocated Fire Station Access Road”). Following WVUH’s completion of the Relocated Fire Station Access Road, the Building Commission, at the Building Commission’s sole cost and expense, shall have the right, but not the duty, to maintain the Relocated Fire Station Access Road in good condition and repair and suitable for use twenty-four (24) hours a day, seven (7) days a week including, without limitation snow and ice removal; provided, that, in the event that the Building Commission refuses or otherwise fails to maintain the Relocated Fire Station Access Road, then and in that event WVUH shall have the right, but not the duty, to maintain such Relocated Fire Station Access Road. Notwithstanding any provision contained herein to the contrary, any specific item of damage to the Relocated Fire Station Access Road caused by either Party, or its respective employees, agents, vendors, contractors or subcontractors, shall be and remain the responsibility of the Party causing such damage. Following WVUH’s completion of the Relocated Fire Station Access Road, WVUH shall have the right, but not the obligation, to to maintain the sidewalks constructed by WVUH as part of the Relocated Fire Station Access Road work in good condition and repair and suitable for use twenty-four (24) hours a day, seven (7) days a week including, without limitation snow and ice removal; provided, that, in the event that WVUH refuses or otherwise fails to maintain the sidewalks, then and in that event the Building Commission shall have the right, but not the duty, to maintain such sidewalks. Notwithstanding any provision contained herein to the contrary, any specific item of damage to the sidewalks caused by either Party, or its respective employees, agents, vendors, contractors or subcontractors, shall be and remain the responsibility of the Party causing such damage.

(d) WVUH does hereby grant, bargain, sell, and convey unto the Building Commission, its successors and assigns, as an appurtenance to the Building Commission Property, a temporary, non-exclusive easement and right of way in, on, over, under, across, and through a portion of the WVU Property, such portion being shown and depicted on Exhibit C attached hereto and incorporated herein by this reference, for the purpose of pedestrian and vehicular ingress, egress and regress to and from West Virginia Route 705 (Van Voorhis Road) and the Building Commission Property during the entire pendency of WVUH's construction with respect to the Relocated Fire Station Access Road. WVUH covenants and agrees that the temporary access road granted herein shall remain open and provide unfettered access twenty-four (24) hours a day, seven (7) days a week suitable for fire truck and related emergency vehicle traffic.

(e) Notwithstanding any provision contained herein to the contrary, the Building Commission, and its successors and assigns as to ownership of the Building Commission Property, shall have the right to dedicate the Relocated Fire Station Access Road as a public street. In the event that the Relocated Fire Station Access Road is dedicated and accepted as a public street, then and in that event the Parties, or their respective successors and assigns, shall execute and deliver such documents, instruments and agreements as may be necessary to memorialize the termination of the Relocated Fire Station Access Road Easement, such termination to be conditioned upon each Party having and maintaining continuous, unfettered access to and from West Virginia Route 705 (Van Voorhis Road) via the Relocated Fire Station Access Road.

3. Reciprocal Utility Easement; Limitations. Each Party shall have permanent, reciprocal easement on, over and across, together with full and free access to, that portion of the WVUH Property being identified and described as Parcel B on Exhibit A and that portion of the Building Commission Property described as Parcel D on Exhibit B, as such area is shown and depicted on Exhibit D attached hereto and incorporated herein by this reference (collectively, the "Utility Easement Area") for the purpose of altering, amending, building, changing, commencing, constructing, establishing, extending, improving, inspecting, installing, laying, locating, maintaining, modifying, operating, placing, protecting, re-building, re-constructing, re-establishing, re-extending, re-improving, reinstalling, re-laying, relocating, removing, repairing, replacing, re-setting, setting, and upkeeping Lines and Related Improvements relative to the provision of utility service to the WVUH Property and/or the Building Commission Property respectively (the "Utility Easement"). Neither Party shall impede, restrict, limit or prohibit the other Party's access to the Utility Easement Area. WVUH covenants and agrees that its use and enjoyment of the Utility Easement Area shall not unreasonably interfere with or cause a material adverse effect on the Building Commission's ability to use and enjoy the Building Commission Property. The Building Commission covenants and agrees that its use and enjoyment of the Utility Easement Area shall not unreasonably interfere with or cause a material adverse effect on the WVUH's ability to use and enjoy the WVUH Property. The Utility Easement is subject to the following conditions: (i) the Utility Easement Area, to the extent such Utility Easement Area is burdened with the Relocated Fire Station Access Road shall remain available at all times to be used and/or traversed by fire apparatus, consistent with its status as an access point to critical emergency services; (ii) WVUH shall provide prior notice of any entry for work related to authorized purposes in the Utility Easement Area and shall only make such entry, and perform such work, upon the approval of the Building Commission, which shall not be unreasonably delayed, conditioned, or denied; and (iii) no Lines and Related Improvements, nor any other facility, equipment, or structure authorized to be placed in the Utility Easement Area for benefit of WVUH, shall be installed, located, or maintained either (X) below the surface grade of the Utility Easement Area or (Y) at a height at or in excess of sixteen and one half (16.5) feet above the Relocated Fire Station Access Road pavement. The Building Commission reserves and retains, on behalf of itself, its successors, and assigns all of its right, title, and interest in and to the Utility Easement Area, subject to the Utility Access Easement granted in this subsection. WVUH reserves and retains, on behalf of itself, its successors, and assigns all of its right, title, and interest in and to the Utility Easement Area, subject to the Utility Access Easement granted in this subsection. The Building Commission shall provide prior notice of any entry for work related to the authorized purposes with respect to Lines and Related Improvements in the Utility

Easement Area and shall only make such entry, and perform such work, upon the approval of WVUH, which shall not be unreasonably delayed, conditioned, or denied.

4. Aerial Easement for Pedestrian Sky Bridge. The Building Commission does hereby grant, bargain, sell, and convey unto WVUH, its successors and assigns, as an appurtenance to the WVUH Property, a perpetual, non-exclusive easement and right of way in, on, over, under, across, and through a portion of the Building Commission Property, described as Parcel D on Exhibit B, in the located and configuration shown and depicted on Exhibit E hereto and incorporated herein by this reference (the “Pedestrian Sky Bridge Area”) for the purposes of (i) pedestrian ingress, egress, and regress between, from, and to the parking garage to be constructed on that portion of the WVUH Property situate and lying north of the Relocated Fire Station Access Road and the medical office building to be constructed on that portion of the WVUH Property situate and lying south of the Relocated Fire Station Access Road, and (ii) building, constructing, extending, improving, inspecting, installing, laying, maintaining, operating, re-constructing, re-building, re-extending, re-improving, reinstalling, re-laying, removing, repairing, replacing, and upkeeping an elevated pedestrian sky bridge (the “Pedestrian Sky Bridge Easement”). The Pedestrian Sky Bridge Easement granted to WVUH is subject to the following conditions: (i) the Relocated Fire Station Access Road Easement shall remain available at all times to be used and/or traversed by fire apparatus, consistent with its status as an access point to critical emergency services; (ii) WVUH shall provide prior notice of any entry for Pedestrian Sky Bridge work (excepting, for avoidance of doubt, pedestrian travel over and through the constructed Pedestrian Sky Bridge) and shall only make such entry, and perform such work, upon the approval of the Building Commission, which shall not be unreasonably delayed, conditioned, or denied; and (iii) WVUH covenants and agrees that the minimum clearance from the Relocated Fire Station Access Road pavement to the bottom of the deck of the pedestrian sky bridge to be built and constructed within the Pedestrian Sky Bridge Easement shall be sixteen and one-half (16.5) feet. WVUH, at WVUH’s sole cost and expense, shall maintain the pedestrian sky bridge and the Pedestrian Sky Bridge Easement Area in good condition and repair.

5. Assumption of Liability.

(a) The Building Commission, to the extent permitted by law and except as limited below, hereby accepts and assumes any and all Liabilities and Losses accruing from, concerning, pertaining to, in relation to, in connection with, or resulting from Building Commission’s default under and/or breach of this Agreement, the negligence, gross negligence, and/or willful intentional acts and/or omissions of the Building Commission or its agents, representatives, employees, contractors, licensees, or invitees in connection with the rights, duties and obligations set forth herein, except to the extent any Liabilities and Losses result from the negligence, gross negligence, and/or intentional acts or omissions of WVUH, or its agents, representatives, employees, contractors, licensees, or invitees, as applicable. Such acceptance and assumption obligation shall run with the Building Commission Property and be and shall be deemed to be delegated, assigned, and transferred to purchasers of the Building Commission Property upon and as of the owner(s) of the same executing, acknowledging, and delivering a deed granting, conveying, and transferring the Building Commission Property, regardless of whether such deed expressly or otherwise references the delegation, assignment, or transfer of such acceptance and assumption obligation, so as to be an obligation running with the land.

(b) WVUH, to the extent permitted by law and except as limited below, hereby accepts and assumes any and all Liabilities and Losses accruing from, concerning, pertaining to, in relation to, in connection with, or resulting from WVUH’s default under and/or breach of this Agreement, the negligence, gross negligence, and/or willful intentional acts and/or omissions of WVUH or its agents, representatives, employees, contractors, licensees, or invitees in connection with the rights, duties and obligations set forth herein, except to the extent any Liabilities and Losses result from the negligence, gross negligence, and/or intentional acts or omissions of the Building Commission, or its agents, representatives, employees, contractors, licensees, or invitees, as applicable. Such acceptance and assumption obligation shall run with

the WVUH Property and be and shall be deemed to be delegated, assigned, and transferred to purchasers of the WVUH Property upon and as of the owner(s) of the same executing, acknowledging, and delivering a deed granting, conveying, and transferring the WVUH Property, regardless of whether such deed expressly or otherwise references the delegation, assignment, or transfer of such acceptance and assumption obligation, so as to be an obligation running with the land.

6. Insurance. Each Party shall maintain comprehensive general liability insurance coverage with limits of not less than One Million Dollars (\$1,000,000.00) with respect to the injury or death of any one person or the damage to property, and Two Million Dollars (\$2,000,000.00) in the aggregate until such time as the easements, rights, duties and obligations set forth in this Agreement have been terminated or extinguished. Either Party shall be entitled to satisfy the requirements of this Section 6 through a bona fide program of self-insurance.

7. Default and Enforcement: In the event that a Party bound by or obligated under or pursuant to this Declaration shall breach or default as to any agreement, condition, covenant, obligation, or provision contained in this Declaration (“Default”), then, in such event, a Party having the right to enforce this Declaration (“Enforcing Party”) shall, prior to such enforcement, first serve a written notice of the occurrence of the Default (“Default Notice”) upon the breaching or defaulting Party (“Defaulting Party”), which Default Notice shall notify the Defaulting Party of such occurrence and that the Defaulting Party shall have the right to cure or remedy the Default within thirty (30) calendar days of the Defaulting Party’s receipt of the Default Notice; provided, however, that in the event that (a) a Default specified in a Default Notice shall be of such a character or nature that it shall not be susceptible of being cured or remedied within a period of thirty (30) calendar days subsequent to the Defaulting Party’s receipt of the Default Notice, (b) the Defaulting Party shall commence to attempt to cure or remedy the Default within a period of ten (10) calendar days subsequent to the Defaulting Party’s receipt of the Default Notice, and (c) the Defaulting Party shall diligently continue to attempt to cure or remedy the Default subsequently, such period of thirty (30) calendar days shall extend for a period which, under all prevailing circumstances, shall be reasonable, but not exceed ninety (90) calendar days subsequent to the Defaulting Party’s receipt of the Default Notice. In the event that a Defaulting Party shall not cure or remedy a Default within the cure period, the Enforcing Party, in the Enforcing Party’s sole discretion, shall have the right, but not the obligation, to, concurrently, separately, or successively, (a) exercise and pursue any and all rights and remedies available at law and in equity, including, without limitation, specific performance by or the enjoinder of the Defaulting Party, or (b) without further notice to the Defaulting Party exercise and pursue the remedy of self-help and pay or perform the agreement, condition, covenant, obligation, or provision as to which a Default shall have occurred, and, in such event, seek reimbursement therefor, together with interest accruing on any and all amounts discharged, expended, incurred, paid, spent, suffered, or sustained in relation thereto at the rate of ten percent (10.00%) per annum from the date such amounts shall have been so discharged, expended, incurred, paid, spent, suffered, or sustained.

8. Breach or Default Shall not Terminate an Easement: No Default shall cancel, extinguish, release, relinquish, sever, or terminate any of the easements described herein.

9. Inurement; Assignment. The Parties, each and all, hereby covenant and agree that, except as otherwise set forth, contained, and provided for in this Agreement, the rights, estates, interests, covenants, and obligations set forth, contained, and provided for in this Agreement are intended to and shall run with and directly benefit and bind the respective lot(s), parcel(s), or tract(s) of property referenced in relation thereto, and shall inure to the benefit of and be binding upon the Parties, as applicable, and each and every other party having an interest or estate in or title to the WVUH Property, the Building Commission Property, presently or subsequently, and any and all lots, parcels, and/or tracts derived therefrom.

10. Severability. In the event that any one or more of the provisions set forth in this Agreement, or the application thereof, in any circumstance, shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of such provision or provisions in any other circumstance shall not be affected or impaired thereby, and the remaining provisions set forth and contained in this Agreement shall remain in full force and effect and be construed and interpreted as if such invalid, illegal, or unenforceable provision or provisions were never included. The provisions of this Agreement shall be severable.

11. Governing Law. The laws of the State of West Virginia, without resort to its conflicts of laws principles, shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights, powers, duties, and obligations of the parties upon whom this Agreement shall be binding.

12. Entire Agreement. This Agreement sets forth and contains the entire understanding among the parties and supersedes and negates any prior written or oral agreement between them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties to this Agreement relating to the subject matter of this Agreement which are not fully expressed and set forth in this Agreement. This Agreement is a complete and final expression and integration of the agreement among the parties.

13. Amendment and Modification. This Agreement shall not be amended, altered, enlarged, modified, or changed except by a written instrument executed the Parties, or their respective heirs, personal representatives, successors or assigns.

14. Construction. The following rules shall apply to the construction and interpretation of this Agreement: (a) the headings, titles, and captions set forth and contained in this Agreement are inserted only as a matter of convenience and for reference purposes only and shall not in any way or manner define, limit, extend, or prescribe the scope or intent of any provision of this Agreement, (b) singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter, and (c) any rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

The undersigned does hereby declare, under penalty of fine and imprisonment, that the total consideration paid for the real estate conveyed by the document to which this declaration is appended is less than \$100.00.

[Remainder of Page Left Blank Intentionally; Signature Page to Follows]

WITNESS the following signatures.

WVUH:
WEST VIRGINIA UNIVERSITY
HOSPITALS, INC.,
a West Virginia non-profit corporation

By: _____
Michael A. Grace, EdD, MBA, FACHE,
its President and CEO

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by Michael A. Grace, , the President and CEO of WEST VIRGINIA UNIVERSITY HOSPITALS, INC., a West Virginia non-profit corporation, for and on behalf of said corporation under authority duly granted.

Notary Public

My commission expires: _____

BUILDING COMMISSION:
MORGANTOWN BUILDING COMMISSION,
a public corporation and municipal building commission

By: _____
Name: _____
Title: _____

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, the Chair of the MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, for and on behalf of said building commission under authority duly granted.

Notary Public

My commission expires: _____

Prepared by:
Seth Wilson, Esq.
Bowles Rice LLP
125 Granville Square, Suite 400
Morgantown, WV 26501

17346515 v2 / W7775.00060

**EXHIBIT A
TO
EASEMENT AGREEMENT**

WVUH Property

All of those certain lots or parcels of real estate, together with any buildings and improvements situate thereon and appurtenances thereunto belonging, situate, lying and being in the Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows:

PARCEL A

TRACT ONE

Beginning at a 5/8" iron pin set with cap (Thrasher) being in the line of City of Morgantown Building Commission (Deed Book 1374 Page 630) and being a common corner of West Virginia University Hospitals Inc. (Deed Book 1688 Page 9) and West Virginia University Board of Governors; thence with two common lines of City of Morgantown Building Commission and West Virginia University Board of Governors

N 79° 47' 53" E, a distance of 140.92' to a rail road spike in concrete found; thence

S 12° 28' 20" E, a distance of 119.77' to a boat spike found being in the line of City of Morgantown Building Commission and being a common corner of West Virginia University Board of Governors and United Bank (Deed Book 1639 Page 433); thence with the common line of West Virginia University Board of Governors and United Bank

S 76° 35' 37" W, a distance of 151.44' to a boat spike found being in the line of West Virginia University Hospitals Inc. and being a common corner of United Bank and West Virginia University Board of Governors; thence with two common lines of West Virginia University Hospitals Inc. and West Virginia University Board of Governors

N 03° 55' 15" E, a distance of 33.81' to a 3/8" iron rod found; thence

N 11° 50' 05" W, a distance of 95.39' to the point of beginning and containing a total of 0.41 acres, more or less, being shown and depicted on that certain plat of survey entitled "Plat of Survey Showing Tax Map 06, Parcel 76.2 for West Virginia University Board of Governors," prepared by Aaron J. Rawe, P.S. No. 2312, of The Thrasher Group, Inc., dated May 2024, a copy of which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 178.

Together with any and all easements and rights of way appurtenant thereto, including without limitation,

The right-of-way upon that certain asphalt road now connecting Route No. 705 and West Virginia Medical Center Road, as shown upon a plat of a survey that was performed by H & B Surveying and Associates, Inc., dated (revised 9-20-82); a right-of-way upon the asphalt driveway abutting said 1.199 acre parcel and the herein described 0.41 acre parcel, (being the remaining part of an original 1.605 acre parcel) on the eastern boundaries as shown upon

said plat; and a right-of-way upon the driveway on the northern boundary of said original 1.605 acre parcel and a 1.586 acre parcel now or formerly of Morgan Manor, Inc. Said rights-of-way are for the ingress and egress of vehicular and pedestrian traffic onto said parcels and shall be non-exclusive.

TRACT TWO

Beginning at a 5/8" iron pin set with cap (Thrasher) in the lands of The West Virginia University Board of Governors (TM 06 PAR 74 DB 1552 PG 688) and being an existing lease area corner; thence with the existing lease area line and the two common lines of Morgantown Building Commission (TM 06 PAR 74.3 DB 1374 PG 630)

S 76° 52' 46" W, a distance of 234.50' (passing through a 3/4" iron rod found on line at 34.23' said rod being a common corner of Morgantown Building Commission and The West Virginia University Board of Governors) to a 1/2" iron rod found; thence

S 10° 08' 17" E, a distance of 75.74' to a 1" pipe found being the common corner of Morgantown Building Commission, City of Morgantown Building Commission (TM 06 PAR 76.3 DB 1374 PG 630), City of Morgantown Building Commission (TM 06 PAR 76.4 DB 1374 PG 630) and The West Virginia University Board of Governors; thence with two common lines of City of Morgantown Building Commission (TM 06 PAR 76.4) and the existing lease area line

S 79° 51' 48" W, a distance of 263.78' to a 3/8" iron rod found; thence

N 80° 34' 09" W, a distance of 53.26' to a point being in the eastern right-of-way edge of Van Voorhis Road and being a common corner of the existing lease area and City of Morgantown Building Commission; thence with five common lines of the existing lease area and the eastern right-of-way edge of Van Voorhis Road

N 09° 43' 27" W, a distance of 97.50' to a point; thence

N 87° 53' 15" W, a distance of 10.00' to a point; thence

N 02° 06' 45" E, a distance of 162.00' to a point; thence

S 87° 53' 15" E, a distance of 20.06' to a point; thence

N 02° 06' 45" E, a distance of 78.00' to a point being in the eastern right-of-way of Van Voorhis Road and being the corner of the existing lease area; thence leaving the eastern right-of-way edge of Van Voorhis Road with fifteen lines of the existing area though the lands of The West Virginia University Board of Governors

N 61° 39' 25" E, a distance of 40.77' to a 5/8" iron pin set with cap (Thrasher); thence

N 71° 27' 23" E, a distance of 37.40' to a 5/8" iron pin set with cap (Thrasher); thence

N 76° 59' 00" E, a distance of 199.79' to a 5/8" iron pin set with cap (Thrasher); thence

N 77° 23' 47" E, a distance of 47.00' to a 5/8" iron pin set with cap (Thrasher); thence

With a curve to the right having a radius of 78.92' an arc length of 36.19' and a chord bearing of N 89° 06' 02" E, a distance of 35.87' to a 5/8" iron pin set with cap (Thrasher); thence

S 71° 34' 29" E, a distance of 13.21' to a 5/8" iron pin set with cap (Thrasher); thence

With a curve to the right having a radius of 89.56' an arc length of 17.90' and a chord bearing of S 59° 55' 19" E, a distance of 17.87' to a 5/8" iron pin set with cap (Thrasher); thence

S 51° 20' 11" E, a distance of 15.48' to a 5/8" iron pin set with cap (Thrasher); thence

S 71° 29' 13" E, a distance of 15.31' to a 5/8" iron pin set with cap (Thrasher); thence

S 04° 21' 34" E, a distance of 21.90' to a 5/8" iron pin set with cap (Thrasher); thence

S 87° 19' 39" E, a distance of 77.02' to a 5/8" iron pin set with cap (Thrasher); thence

S 17° 55' 24" E, a distance of 7.42' to a 5/8" iron pin set with cap (Thrasher); thence

S 13° 06' 20" E, a distance of 87.66' to a 5/8" iron pin set with cap (Thrasher); thence

S 09° 52' 01" E, a distance of 45.18' to a 5/8" iron pin set with cap (Thrasher); thence

S 11° 46' 04" E, a distance of 68.55' to the point of beginning and containing a total of 3.90 acres, more or less, being shown and depicted on that certain plat of survey entitled "Plat of Survey Showing Existing Lease Area Boundary for West Virginia University Board of Governors," prepared by Aaron J. Rawe, P.S. No. 2312, of The Thrasher Group, Inc., dated September 2024, a copy of which is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 180.

And being the same real estate as conveyed from West Virginia University Board of Governors, on behalf of West Virginia University, an agency or instrumentality of the State of West Virginia, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, by Deed dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167.

LESS AND EXCEPTING THEREFROM AND THEREOUT all of that certain lot or parcel of real estate conveyed from WVUH to the Building Commission by Deed of Exchange dated _____, 2025 and to be recorded in the Clerk's Office immediately prior to the recordation of this instrument:

Beginning at a 1" iron pipe found at a corner common to West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 688), Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), Morgantown Building Commission (Tax Map 6 Parcel 74.3, Deed Book 1374 Page 630) and Morgantown Building Commission (Tax Map 6 Parcel 76.3, Deed Book 1374 Page 630), from which a 1/2" iron rebar found at a corner to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3) bears N 10° 08' 17" W 58.32', thence leaving said Morgantown Building Commission (Parcel 74.3 & 76.3) and with said Morgantown Building Commission (Parcel 76.4);

S 79° 51' 48" W 255.69' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said Morgantown Building Commission (Parcel 76.4) and through said West Virginia University Board of Governors (Parcel 74);

N 86° 19' 16" W 27.03' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

N 80° 34' 09" W 33.98' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said Morgantown Building Commission (Parcel 74.3) and with said West Virginia Route 705 (Van Voorhis Road);

N 09° 43' 27" W 43.47' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said West Virginia University Board of Governors (Parcel 74) for five (5) lines;

By a curve to the left having a radius of 38.50', an arc length of 15.25', and a chord bearing of S 74° 47' 46" E 15.15' to a point, thence;

S 86° 08' 46" E 6.97' to a point, thence;

S 86° 09' 56" E 149.86' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 85° 01' 08" E 59.52' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

S 10° 08' 17" E 17.42' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

PARCEL B

ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West Virginia University Hospitals, Inc. (Parcel 76.1) for two (2)

lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74 and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being the same real estate as conveyed from the Building Commission to WVUH by Deed of Exchange dated _____, 2025 and to be recorded in the Clerk's Office immediately prior to the recordation of this instrument.

**EXHIBIT B
TO
EASEMENT AGREEMENT**

Description of the Building Commission Property

All of the following described parcels of real estate and any interests therein, together with any appurtenances located thereon, situate, lying, and being in the Morgantown Corporation District, Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, more particularly bounded and described as follows:

Parcel A

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with three lines through property of West Virginia University;

N. 10° 27' 00" W. 86.17 feet to an iron pin,
S. 76° 33' 45" W. 200.27 feet to an iron pin,
S. 10° 27' 00" E. 75.74 feet to an iron pipe;

Thence, with a line being a boundary between West Virginia University and the Monongalia County Commission, N. 79° 33' 00" E. 200.00 feet to the place of beginning, said parcel containing 0.3717 acres, as shown on a plat dated October 18, 2006, prepared by Dempsey Engineering Co.

This conveyance is made subject to all restrictions, rights of way, easements, covenants and conditions of record as contained in the chain of title.

The above-described Parcel A being the same as was conveyed to the Morgantown Building Commission by deed dated December 5, 2006, from the West Virginia University Board of Governors, on behalf of West Virginia University, of record in the Office of the Clerk of The County Commission of Monongalia County in Deed Book No. 1339, at page 408, and by a Corrective Deed dated September 30, 2008, from the West Virginia University Board of Governors, on behalf of West Virginia University, recorded in the Office of the Clerk of The County Commission of Monongalia County in Deed Book No. 1374, at page 616.

Parcel B

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with a line being a boundary between West Virginia University and the Monongalia County Commission S 79° - 33' — 00" W a distance of 200.00 feet to an iron pipe; thence with three lines through the property of the Monongalia County Commission:

S 13° - 23' — 18" E a distance of 79.63 feet to an iron pin;

N 77° - 56' — 38" E a distance of 198.02 feet to an iron pin;

N 12° - 01' — 00" W a distance of 74.01 feet to the place of beginning with said parcel containing 0.3508 Acres, and shown on the attached Exhibit as "Parcel B". Said real estate

being a part of Parcel 76 as shown on Morgantown Corporation Tax Map 6.

Parcel C

Beginning at an iron pipe which is a common corner to parcels A & B and also a common corner to lands of West Virginia University and the Monongalia County Commission; thence with a line separating West Virginia University and the Monongalia County Commission with two calls:

S 79° - 33' — 00" W a distance of 263.77 feet to an iron pin;

N 80° - 37' — 30" W a distance of 51.16 feet to a RR spike. Said point being on the existing Right-of-Way line of Van Voorhis Road also referred to as West Virginia Route 705; thence with the Right-of-Way of Route 705 S 4° - 11' — 57" W a distance of 49.81 feet to an iron pin, said pin being a corner of West Virginia University property; thence with a line of said West Virginia University property with two calls:

S 80° - 46' — 04" E a distance of 53.23 feet to an iron pin;

N 79° - 34' — 58" E a distance of 109.00 feet to a RR spike being a corner of West Virginia University and Solomon properties; thence with two lines of Solomon;

N 79° - 30' — 22" E a distance of 141.00 feet to a PK nail in asphalt pavement

S. 12° - 43' - 19" E a distance of 119.70 feet to a bolt being the common corner of Solomon and Centra Bank; thence with three lines of Centra Bank;

S 12° - 43' — 19" E a distance of 83.20 feet to an iron pin;

S 1° - 48' - 48" W a distance of 228.15 feet to an iron pin;

S 49° - 27' — 39" W a distance of 32.24 feet to an iron pin; said iron pin being a corner of Centra Bank and on the Right-of-Way of Elmer Prince Drive; thence with the Right-of-Way of Elmer Prince Drive S 88° - 16' — 36" E a distance of 72.06 feet to an iron pin; thence leaving the Right-of-Way of Elmer Prince Drive N 41° - 31' — 13" W a distance of 33.20 feet to a point on a concrete curb said point being the end of a radius; thence with a new boundary of an existing roadway on properties of the Monongalia County Commission with three calls:

N 1° - 39' — 44" E a distance of 230.27 feet to a PK nail in asphalt pavement;

N 12° - 03' — 26" W a distance of 172.72 feet to an iron pin also being a corner to parcel B, which is shown on the attached Exhibit; thence with parcel B and said roadway N 13° - 23' — 18" W a distance of 79.63 feet to the place of beginning, said parcel containing 0.6431 Acres, and shown on the attached Exhibit as "Parcel C". And being parts of parcels 74.2 and 76 as shown on Morgantown Corporation Tax Map 6.

And both of the above Parcels B and C being the real property conveyed to the Morgantown Building Commission, by The County Commission of Monongalia County pursuant to a deed dated November 22, 2006, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1339 at Page 403.

The above-described real estate is conveyed subject to all exceptions, reservations, conditions and rights-of-way as heretofore imposed upon said realty by The County Commission of Monongalia County and its predecessors in title, including a right-of-way granted unto Steven B. Solomon and Dan L. Shearer, III, by agreement dated June 4, 1990, and of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1012 at Page 213.

The above described real estate is further conveyed with the understanding that upon the termination of the aforementioned right-of-way agreement with Steven B. Solomon and Dan L. Shearer, III, the Morgantown Building Commission, as Grantee, by and through the City of Morgantown, shall maintain the vehicular travelway addressed in the Steven B. Solomon and Dan L. Shearer, III, agreement. Also, it is understood that with the recording of this deed, the City of Morgantown shall begin maintaining the 375 foot long north/south roadway which intersects with Elmer Prince Drive and is shown on the attached Exhibit as part of Parcel C.

LESS AND EXCEPTING THEREFROM AND THEREOUT all of that certain lot or parcel of real estate conveyed from the Building Commission to WVUH by Deed of Exchange dated _____, 2025 and to be recorded in the Clerk's Office immediately prior to the recordation of this instrument:

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West Virginia University Hospitals, Inc. (Parcel 76.1) for two (2) lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74 and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

PARCEL D

ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a 1" iron pipe found at a corner common to West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 688), Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), Morgantown Building Commission (Tax Map 6 Parcel 74.3, Deed Book 1374 Page 630) and Morgantown Building Commission (Tax Map 6 Parcel 76.3, Deed Book 1374 Page 630), from which a ½" iron rebar found at a corner to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3) bears N 10° 08' 17" W 58.32', thence leaving said Morgantown Building Commission (Parcel 74.3 & 76.3) and with said Morgantown Building Commission (Parcel 76.4);

S 79° 51' 48" W 255.69' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said Morgantown Building Commission (Parcel 76.4) and through said West Virginia University Board of Governors (Parcel 74);

N 86° 19' 16" W 27.03' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

N 80° 34' 09" W 33.98' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said Morgantown Building Commission (Parcel 74.3) and with said West Virginia Route 705 (Van Voorhis Road);

N 09° 43' 27" W 43.47' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said West Virginia University Board of Governors (Parcel 74) for five (5) lines;

By a curve to the left having a radius of 38.50', an arc length of 15.25', and a chord bearing of S 74° 47' 46" E 15.15' to a point, thence;

S 86° 08' 46" E 6.97' to a point, thence;

S 86° 09' 56" E 149.86' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 85° 01' 08" E 59.52' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

S 10° 08' 17" E 17.42' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

The above-described Parcel D being the same real estate as conveyed from WVUH to the Building Commission by Deed of Exchange dated _____, 2025 and to be recorded in the Clerk's Office immediately prior to the recordation of this instrument.

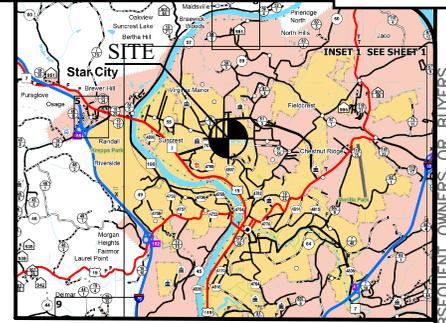
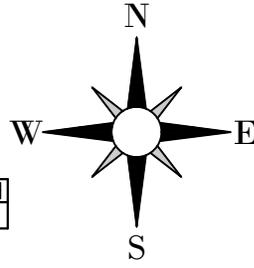
**EXHIBIT C
TO
EASEMENT AGREEMENT**

Depiction of Temporary Access Easement

**EXHIBIT D
TO
EASEMENT AGREEMENT**

Depiction of Utility Easement Area

NOTE: THE TRACT SHOWN BEING A PART OF THE SAME LANDS CONVEYED TO WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS FROM M&J PROPERTY HOLDINGS, LLC AS RECORDED IN DEED BOOK 1552 PAGE 688 AND MORGANTOWN BUILDING COMMISSION AS RECORDED IN DEED BOOK 1374 PAGE 630 AT THE OFFICE OF THE CLERK, MONONGALIA COUNTY, WEST VIRGINIA.

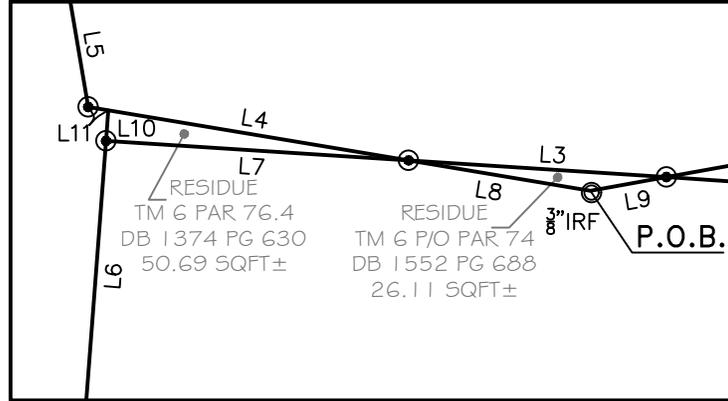


| CURVE | RADIUS | ARC LENGTH | CHORD BEARING | CHORD LENGTH |
|-------|--------|------------|---------------|--------------|
| C1 | 38.50' | 15.25' | S 74°47'46" E | 15.15' |

| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 86°08'46" E | 6.97' |
| L2 | S 10°08'17" E | 17.42' |
| L3 | N 86°19'16" W | 27.03' |
| L4 | N 80°34'09" W | 33.98' |
| L5 | N 09°43'27" W | 43.47' |
| L6 | N 04°21'52" E | 46.54' |
| L7 | S 86°19'16" E | 31.74' |
| L8 | S 80°34'09" E | 19.28' |
| L9 | N 79°51'48" E | 8.09' |
| L10 | N 04°21'52" E | 3.19' |
| L11 | N 80°34'09" W | 2.12' |

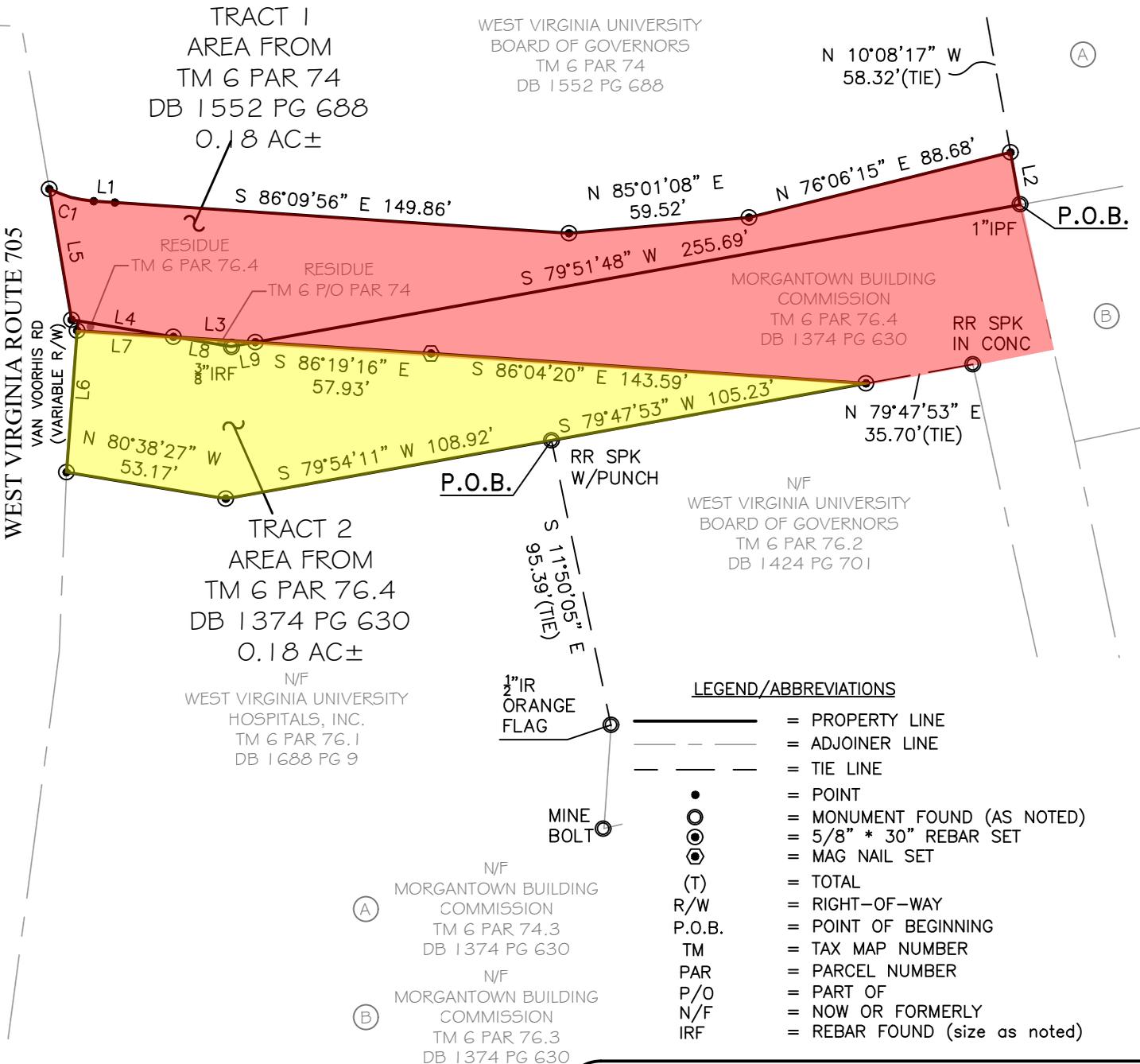
BASIS OF BEARING
WV STATE PLANE NORTH
NAD 83(2011)

VICINITY MAP
NOT TO SCALE



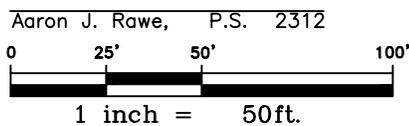
DETAIL
SCALE 1"=20'

- (Post Swap) Morgantown Building Commission Property
- WVU Hospital, Inc. Property



LEGEND/ABBREVIATIONS

- = PROPERTY LINE
- = ADJOINER LINE
- - - - - = TIE LINE
- = POINT
- ⊙ = MONUMENT FOUND (AS NOTED)
- ⊙ = 5/8" * 30" REBAR SET
- ⊙ = MAG NAIL SET
- (T) = TOTAL
- R/W = RIGHT-OF-WAY
- P.O.B. = POINT OF BEGINNING
- TM = TAX MAP NUMBER
- PAR = PARCEL NUMBER
- P/O = PART OF
- N/F = NOW OR FORMERLY
- IRF = REBAR FOUND (size as noted)



T30-11038

THRASHER THE THRASHER GROUP, INC.
600 WHITE OAKS BLVD.
BRIDGEPORT, WV 26330
PHONE 304-624-4108
www.thrashergroup.com

PLAT OF SURVEY FOR
WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS
SHOWING
PROPOSED LAND SWAP
OF THE
MORGANTOWN 7TH WARD CORP WEST VIRGINIA
MONONGALIA COUNTY JULY 2024

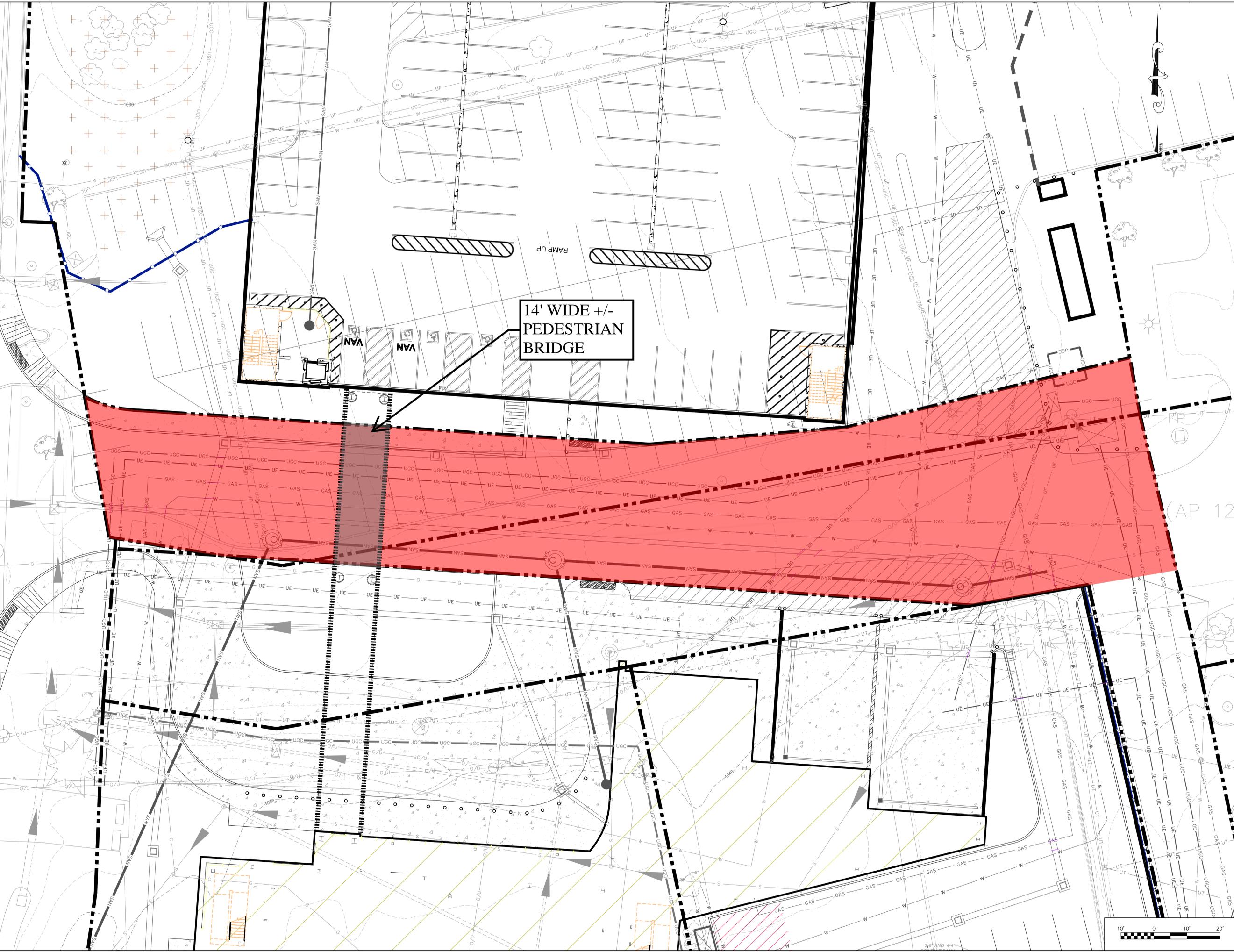
CAD FILE: R:\030\T30-11038.00-HED -WVUM Eye Institute-HED -Survey\Property\Road-Parcel-Revision.dwg PLOT DATE/TIME: 7/29/2024 - 3:19pm LAYOUT: Plat USER: cir/vne

THIS SURVEY IS NOT VALID WITHOUT ORIGINAL BLUE SIGNATURE AND SEAL. DECLARATIONS MADE HEREIN ON THE DATE INDICATED ARE TO THE OWNERS(S) OR BUYER(S) LISTED BELOW AND ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS OR BUYERS.

**EXHIBIT E
TO
EASEMENT AGREEMENT**

Depiction of Pedestrian Sky Bridge Easement

CAD FILE: R:\2020\11038-00-HED-WVUM Eye Institute-HED-Opening\11038-PRO UTILITIES_recover.dwg
PLOT DATE/TIME: 11/22/2024 11:28 AM
LAYOUT: Road-city
USER: Jeffrey golo



PARTIAL RELEASE AND SUBORDINATION AGREEMENT

WESBANCO BANK, INC.,

TO

MORGANTOWN BUILDING COMMISSION and
THE CITY OF MORGANTOWN,

WesBanco Bank, Inc. ("Secured Party"), for good and valuable consideration, the adequacy, receipt, and sufficiency of all of which are acknowledged, for the benefit of and in favor of Morgantown Building Commission and The City of Morgantown (collectively, the "Grantor"), and Grantor's respective successors and assigns, hereby:

1. cancels, discharges, terminates and releases the lien, encumbrance and security interest created and evidenced by that certain Credit Line Deed of Trust, Fixture Filing and Security Agreement executed by Morgantown Building Commission and The City of Morgantown to Charles M. Johnson, Trustee, dated the 1st day of June, 2013 and made effective June 28, 2013, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia (the "Clerk's Office") in Trust Deed Book No. 1951, at Page 142 (the "Deed of Trust") to the limited extent, and only to the limited extent, that the Deed of Trust constitutes an encumbrance, lien, or security interest against or on the real estate described on Exhibit A attached hereto and incorporated herein by this reference (the "Released Property"), and

2. subjects and subordinates the Deed of Trust to and in favor of that certain Easement Agreement by and between West Virginia University Hospitals, Inc., on one hand, and Grantor, on the other hand, dated _____, 2025 and to be recorded in the aforesaid Clerk's Office immediately prior to the recordation of this Partial Release and Subordination Agreement (the "Easement Agreement"), with the intent that and to the effect that (a) the Deed of Trust shall be deemed to have been made, entered into, executed, acknowledged, delivered, and recorded in the Clerk's Office subsequent in time to the Easement Agreement, and (b) neither the Easement Agreement nor any of the easements or rights of way created, dedicated, established, or granted by or pursuant to such Easement Agreement shall be affected, cancelled, disturbed, extinguished, foreclosed, released, relinquished, or terminated, in any character, manner, or nature, by the exercise of any remedies or rights, including, without limitation, the remedy or right of foreclosure, pursuant to the Deed of Trust.

In all other respects, and as to all other real property other than the Released Property, the above-described Deed of Trust shall remain in full force and effect.

[Remainder of Page Left Blank Intentionally; Signature Page to Follow]

IN WITNESS WHEREOF, WesBanco Bank, Inc. has executed and delivered this Partial Release and Subordination Agreement as of the _____ day of _____, 2025.

WESBANCO BANK, INC.

By: _____
Name: _____
Its: _____

STATE OF WEST VIRGINIA,
COUNTY OF _____, TO-WIT:

I, _____, a Notary Public in and for the County and State aforesaid, do certify that _____, the _____, of WesBanco Bank, Inc. has executed the foregoing instrument for and on behalf of said Bank under authority duly granted and for the purposes therein contained.

Given under my hand this _____ day of _____, 2025.

Notary Public

My commission expires: _____

This Instrument was prepared by:
Seth Wilson, Esq.
BOWLES RICE LLP
125 Granville Square, Suite 400
Morgantown, WV 26505-1720
(304) 285-2500

17329833.1 W7775/00060

**EXHIBIT A
TO
PARTIAL RELEASE AND SUBORDINATION AGREEMENT**

Description of Released Property

ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West Virginia University Hospitals, Inc. (Parcel 76.1) for two (2) lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74 and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres, more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being part of the real estate as conveyed The City of Morgantown Building Commission, a West Virginia public commission, by the following instruments of record: (1) Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated December 5, 2006 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1339, at page 408, (2) Corrective Deed from the West Virginia University Board of Governors, on behalf of West Virginia University, dated September 30, 2008 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book No. 1374, at page 616, and (3) Deed from The County Commission of Monongalia County, West Virginia dated November 22, 2006 and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1339 at Page 403.

FIRST SUPPLEMENTAL INDENTURE OF TRUST

between

MORGANTOWN BUILDING COMMISSION

and

**WESBANCO BANK, INC.,
as Trustee**

Dated as of _____, 2025

Relating to:

**MORGANTOWN BUILDING COMMISSION (WEST VIRGINIA)
LEASE REVENUE REFUNDING BONDS, SERIES 2013 A
(NORTH SIDE FIRE STATION PROJECT)**

FIRST SUPPLEMENTAL INDENTURE OF TRUST

THIS FIRST SUPPLEMENTAL INDENTURE OF TRUST (this “Supplemental Indenture”) dated as of _____, 2025, is by and between the **MORGANTOWN BUILDING COMMISSION**, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (the “Issuer”), and **WESBANCO BANK, INC.**, as trustee (the “Trustee”), supplementing the Indenture of Trust, dated as of June 1, 2013, by and between the Issuer and the Trustee (the “Original Indenture” and together with this Supplemental Indenture, the “Indenture”; all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Original Indenture).

RECITALS

WHEREAS, pursuant to the authority of Chapter 8, Article 33, of the Code of West Virginia, 1931, as amended (the “Act”), The City of Morgantown (the “City”) enacted an ordinance on August 16, 1988, creating the Morgantown Building Commission, a public corporation with perpetual existence and a municipal building commission within the meaning of the Act;

WHEREAS, the Issuer under the Act has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, to sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, including municipal buildings, jail facilities, police stations, fire stations, and other public buildings, and the City has heretofore deemed the design, acquisition, construction and equipping of the North Side Fire Station to be necessary and appropriate for the public interest;

WHEREAS, the Issuer has heretofore obtained title to certain real estate, situate lying and being in the City, Monongalia County, West Virginia, as described in the Original Indenture in Exhibit A – Site Description (the “Original Site”), and the City has acquired and constructed thereon a North Side Fire Station to provide fire protection services to the City and the City has acquired and installed certain fixtures, equipment, furnishings and other personal property within such building, or has acquired certain equipment and other personal property in connection with the use of such facility, including but not limited to a fire truck and all related appurtenances thereto (such real estate, buildings, fixtures, equipment, furnishings and other personal property within such buildings or used in connection therewith, together with all rights of way and appurtenances thereto, herein called the “Facilities”);

WHEREAS, the Issuer under the Act has the power and authority to raise funds by the issuance and sale of revenue bonds in the manner provided by certain provisions of Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the “Revenue Bond Act”);

WHEREAS, pursuant to the Act, certain provisions of Revenue Bond Act, and an Ordinance of the Issuer enacted and adopted on November 26, 2012, as supplemented by a Supplemental Resolution adopted by the Issuer on November 26, 2012 and by a Second Supplemental Resolution adopted by the Issuer on June 6, 2013 (collectively, the “Original Ordinance”), the Issuer issued its Lease Revenue Refunding Bonds, Series 2013 A (North Side Fire Station Project), dated June 28, 2013 (the “Series 2013 A Bonds”), under the Original Indenture for the purpose of, among other things, refunding the Series 2008 A Bonds which were issued to pay the costs of acquisition and construction of the Facilities;

WHEREAS, the Original Indenture was recorded in the office of the Clerk of the County Commission of Monongalia County at Trust Deed Book No. 1951, page 65;

WHEREAS, the Issuer leases the Facilities to the City pursuant to an Agreement and Lease dated as of June 1, 2013 of record in the office of the Clerk of the County Commission of Monongalia County at Deed Book No. 1480, page 800 (the “Original Lease”);

WHEREAS, the Series 2013 A Bonds are payable solely from and secured by the rentals paid by the City under the Original Lease;

WHEREAS, representatives of West Virginia University Hospitals, Inc., a West Virginia non-profit corporation (“WVUH”) have approached the City seeking to acquire a portion of the Original Site (“Parcel 1”) to facilitate proper access to a new healthcare facility of WVUH which is planned to be constructed on a parcel of real property immediately adjacent to the Original Site;

WHEREAS, in exchange for the conveyance to WVUH of Parcel 1, WVUH will convey a like amount of its immediately adjacent real property (“Parcel 2”) to the Issuer (the conveyance of Parcel 1 from the Issuer to WVUH and the conveyance of Parcel 2 from WVUH to the Issuer are collectively referred to herein as the “Property Exchange”);

WHEREAS, the Property Exchange will also include the execution and delivery by WVUH and the Issuer of an Easement Agreement, made and entered into as of _____, 2025 (the “Easement Agreement”), pursuant to which, among other things (i) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way for a portion of the Building Commission Property (as defined therein), (ii) the Issuer retains the right to use and enjoy the Relocated Fire Station Access Road Easement (as defined therein), (iii) WVUH conveys unto the Issuer a temporary, non-exclusive easement and right of way through a portion of the WVU Property (as defined therein) during WVUH’s construction of the Relocated Fire Station Access Road, (iv) Issuer and WVUH stipulate that each shall have a permanent, reciprocal easement with respect to the portions of the WVUH Property and Building Commission Property described therein for the purpose of construction and maintenance of utilities serving the area, and (v) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way through a portion of the Building

Commission Property for the purposes of constructing, utilizing and maintaining a pedestrian sky bridge;

WHEREAS, the Issuer and the Trustee have received from the City a certificate (i) requesting the Issuer to consummate the Property Exchange, (ii) requesting the Trustee’s consent to consummate the Property Exchange and execute necessary documents to complete same, (iii) finding that the Property Exchange is not detrimental to the use of the Facilities as intended, (iv) demonstrating that Parcel 1 is not necessary for the operation of the Facilities, and (v) demonstrating that the value of the Facilities is not adversely affected by the Property Exchange;

WHEREAS, the Issuer has heretofore enacted an Ordinance on _____, 2025 (the “Authorizing Ordinance”) authorizing the consummation of the Property Exchange and the execution and delivery by the Issuer of this Supplemental Indenture in connection therewith;

WHEREAS, the Issuer and the Trustee hereby agree that the real estate described in **Exhibit A** attached hereto shall be substituted for the real estate described in Exhibit A to the Original Indenture and that the definition of “Site” set forth in the Original Indenture shall refer to the real estate escribed in **Exhibit A** attached hereto; and

WHEREAS, Section 9.01(C) of the Original Indenture provides that the Issuer and the Trustee may enter into an indenture supplemental to the Original Indenture without the consent of Bondholders for the purpose of subjecting to the lien and pledge of the Original Indenture additional revenues, property or collateral.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, the Issuer and the Trustee agree as follows:

Section 1. The real estate, together with all equipment, furniture, fixtures, facilities, machinery, furnishings, and other personal property thereon, described in **Exhibit A** attached hereto and incorporated by reference herein, shall be substituted for the real estate described in Exhibit A to the Original Indenture, and the definition of “Site” set forth in the Original Indenture shall refer to the real estate escribed in **Exhibit A** attached hereto.

Section 2. The Trustee hereby approves and consents to the Property Exchange and the substitution of the real estate described in **Exhibit A** attached hereto.

Section 3. The Trustee hereby waives the applicability of Section 6.18 of the Original Indenture with respect to the Property Exchange and the substitution of the real estate described in **Exhibit A** attached hereto.

Section 4. The Indenture, as supplemented by this Supplemental Indenture, shall remain in full force and effect as originally executed and delivered.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, MORGANTOWN BUILDING COMMISSION and WESBANCO BANK, INC., as Trustee, have caused these presents to be signed in their respective names and on their behalf and, where appropriate, their corporate seals to be affixed and attested by their respective officers thereunto duly authorized, all as of the day and year first above written.

MORGANTOWN BUILDING COMMISSION

[SEAL]

By: _____
Its Chair

ATTEST:

By: _____
Its Secretary

WESBANCO BANK, INC., as Trustee

By: _____
Its: _____

This First Supplemental Indenture of Trust was prepared by Thomas L. Aman, Jr. of Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330.

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, Chair of the MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, for said public corporation and municipal building commission.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF OHIO, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, _____ of WESBANCO BANK, INC., as Trustee, a West Virginia banking corporation, on behalf of said corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

EXHIBIT A

REVISED SITE DESCRIPTION

All of the following described parcels of real estate and any interests therein, together with any appurtenances located thereon, situate, lying, and being in the Morgantown Corporation District, Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, more particularly bounded and described as follows:

Parcel A

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with three lines through property of West Virginia University;

N. 10° 27' 00" W. 86.17 feet to an iron pin,

S. 76° 33' 45" W. 200.27 feet to an iron pin,

S. 10° 27' 00" E. 75.74 feet to an iron pipe;

Thence, with a line being a boundary between West Virginia University and the Monongalia County Commission, N. 79° 33' 00" E. 200.00 feet to the place of beginning, said parcel containing 0.3717 acres, as shown on a plat dated October 18, 2006, prepared by Dempsey Engineering Co.

This conveyance is made subject to all restrictions, rights of way, easements, covenants and conditions of record as contained in the chain of title.

The above described real property was conveyed to the Morgantown Building Commission by deed dated December 5, 2006, from the West Virginia University Board of Governors, on behalf of West Virginia University, of record in the Office of the Clerk of The County Commission of Monongalia County in Deed Book No. 1339, at page 408, and by a Corrective Deed dated September 30, 2008, from the West Virginia University Board of Governors, on behalf of West Virginia University, recorded in the Office of the Clerk of The County Commission of Monongalia

County on the date of record of this Deed of Trust.

Parcel B

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with a line being a boundary between West Virginia University and the Monongalia County Commission S 79° - 33' - 00" W a distance of 200.00 feet to an iron pipe; thence with three lines through the property of the Monongalia County Commission:

S 13° - 23' - 18" E a distance of 79.63 feet to an iron pin;

N 77° - 56' - 38" E a distance of 198.02 feet to an iron pin;

N 12° - 01' - 00" W a distance of 74.01 feet to the place of beginning with said parcel containing 0.3508 Acres, and shown on the attached Exhibit as "Parcel B". Said real estate being a part of Parcel 76 as shown on Morgantown Corporation Tax Map 6

Parcel C

Beginning at an iron pipe which is a common corner to parcels A & B and also a common corner to lands of West Virginia University and the Monongalia County Commission; thence with a line separating West Virginia University and the Monongalia County Commission with two calls:

S 79° - 33' - 00" W a distance of 263.77 feet to an iron pin;

N 80° - 37' - 30" W a distance of 51.16 feet to a RR spike. Said point being on the existing Right-of-Way line of Van Voorhis Road also referred to as West Virginia Route 705; thence with the Right-of-Way of Route 705 S 4° - 11' - 57" W a distance of 49.81 feet to an iron pin, said pin being a corner of West Virginia University property; thence with a line of said West Virginia University property with two calls:

S 80° - 46' - 04" E a distance of 53.23 feet to an iron pin;

N 79° - 34' - 58" E a distance of 109.00 feet to a RR spike being a corner of West Virginia University and Solomon properties; thence with two lines of Solomon;

N 79° - 30' - 22" E a distance of 141.00 feet to a PK nail in asphalt pavement;

S. $12^{\circ} - 43' - 19''$ E a distance of 119.70 feet to a bolt being the common corner of Solomon and Centra Bank; thence with three lines of Centra Bank;

S $12^{\circ} - 43' - 19''$ E a distance of 83.20 feet to an iron pin;

S $1^{\circ} - 48' - 48''$ W a distance of 228.15 feet to an iron pin;

S $49^{\circ} - 27' - 39''$ W a distance of 32.24 feet to an iron pin; said iron pin being a corner of Centra Bank and on the Right-of-Way of Elmer Prince Drive; thence with the Right-of-Way of Elmer Prince Drive S $88^{\circ} - 16' - 36''$ E a distance of 72.06 feet to an iron pin; thence leaving the Right-of-Way of Elmer Prince Drive N $41^{\circ} - 31' - 13''$ W a distance of 33.20 feet to a point on a concrete curb said point being the end of a radius; thence with a new boundary of an existing roadway on properties of the Monongalia County Commission with three calls:

N $1^{\circ} - 39' - 44''$ E a distance of 230.27 feet to a PK nail in asphalt pavement;

N $12^{\circ} - 03' - 26''$ W a distance of 172.72 feet to an iron pin also being a corner to parcel B, which is shown on the attached Exhibit; thence with parcel B and said roadway N $13^{\circ} - 23' - 18''$ W a distance of 79.63 feet to the place of beginning, said parcel containing 0.6431 Acres, and shown on the attached Exhibit as "Parcel C". And being parts of parcels 74.2 and 76 as shown on Morgantown Corporation Tax Map 6.

And both of the above Parcels B and C being the real property conveyed to the Morgantown Building Commission, by The County Commission of Monongalia County pursuant to a deed dated November 22, 2006, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1339 at Page 403.

The above-described real estate is conveyed subject to all exceptions, reservations, conditions and rights-of-way as heretofore imposed upon said realty by The County Commission of Monongalia County and its predecessors in title, including a right-of-way granted unto Steven B. Solomon and Dan L. Shearer, III, by agreement dated June 4, 1990, and of record in the office of the

Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1012 at Page 213.

The above described real estate is further conveyed with the understanding that upon the termination of the aforementioned right-of-way agreement with Steven B. Solomon and Dan L. Shearer, III, the Grantee, by and through the City of Morgantown, shall maintain the vehicular travelway addressed in the Steven B. Solomon and Dan L. Shearer, III, agreement. Also, it is understood that with the recording of this deed, the City of Morgantown shall begin maintaining the 375 foot long north/south roadway which intersects with Elmer Prince Drive and is shown on the attached Exhibit as part of Parcel C.

Provided, however, that there is excepted and reserved from the above described Parcel A, Parcel B and Parcel C, or any portion thereof, as applicable, the following described lot or parcel of land conveyed by the Morgantown Building Commission unto West Virginia University Hospitals, Inc. pursuant to a Deed of Exchange, dated _____, 2025, which lot or parcel shall not be secured pursuant to this Supplemental Indenture as follows:

ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West

Virginia University Hospitals, Inc. (Parcel 76.1) for two (2) lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74 and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

Parcel D

Beginning at a 1" iron pipe found at a corner common to West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 688), Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), Morgantown Building Commission (Tax Map 6 Parcel 74.3, Deed Book 1374 Page 630) and

Morgantown Building Commission (Tax Map 6 Parcel 76.3, Deed Book 1374 Page 630), from which a 1/2" iron rebar found at a corner to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3) bears N 10° 08' 17" W 58.32', thence leaving said Morgantown Building Commission (Parcel 74.3 & 76.3) and with said Morgantown Building Commission (Parcel 76.4);

S 79° 51' 48" W 255.69' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said Morgantown Building Commission (Parcel 76.4) and through said West Virginia University Board of Governors (Parcel 74);

N 86° 19' 16" W 27.03' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

N 80° 34' 09" W 33.98' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said Morgantown Building Commission (Parcel 74.3) and with said West Virginia Route 705 (Van Voorhis Road);

N 09° 43' 27" W 43.47' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said West Virginia University Board of Governors (Parcel 74) for five (5) lines;

By a curve to the left having a radius of 38.50', an arc length of 15.25', and a chord bearing of S 74° 47' 46" E 15.15' to a point, thence;

S 86° 08' 46" E 6.97' to a point, thence;

S 86° 09' 56" E 149.86' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 85° 01' 08" E 59.52' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel

74.3), thence with said Morgantown Building Commission (Parcel 74.3);

S 10° 08' 17" E 17.42' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being part of the real estate as conveyed from West Virginia University Board of Governors, on behalf of West Virginia University, an agency or instrumentality of the State of West Virginia, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, by Deed dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167 and thereupon conveyed by West Virginia University Hospitals, Inc. to the Morgantown Building Commission pursuant to a Deed of Exchange, dated _____, 2025 and recorded contemporaneous herewith.

Easement Agreement

All those certain rights of way, easements and other rights conveyed unto the Morgantown Building Commission by West Virginia University Hospitals, Inc. or reserved by the Morgantown Building Commission pursuant to that certain Easement Agreement, dated _____, 2025, by and between West Virginia University Hospitals, Inc. and the Morgantown Building Commission.

First Supplement to Deed of Trust

A CREDIT LINE DEED OF TRUST

**FIRST SUPPLEMENT AND AMENDMENT TO CREDIT LINE
DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT**

THIS FIRST SUPPLEMENT AND AMENDMENT TO CREDIT LINE DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (this “Supplemental Deed of Trust and Security Agreement”), dated as of _____, 2025, but effective as of _____, 2025, by and among **MORGANTOWN BUILDING COMMISSION**, a public corporation and municipal building commission, organized and existing under the laws of the State of West Virginia (the “Issuer”), whose address is 389 Spruce Street, Morgantown, West Virginia 26505, Attention: Chair and **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia (the “City”, and collectively with the Issuer, the “Grantor”), whose address is 389 Spruce Street, Morgantown, West Virginia 26505, Attention: City Manager, and Charles M. Johnson, a resident of Putnam County, West Virginia, and who maintains a business address at Laidley Tower, Suite 401, 500 Lee Street East, Charleston, West Virginia 25301, as trustee (the “Trustee”), supplementing and amending that certain Credit Line Deed of Trust, Fixture Filing and Security Agreement dated as of June 1, 2013, and of record in the office of the Clerk of the County Commission of Monongalia County in Trust Deed Book 1951, at page 142 (the “Original Deed of Trust”; the Original Deed of Trust, as supplemented and amended hereby, is hereinafter referred to as the “Deed of Trust”; capitalized terms used and not otherwise defined herein shall have the respective meanings given them in the Original Deed of Trust). The beneficiary of the Deed of Trust is **WESBANCO BANK, INC.** (the “Beneficiary”), as indenture trustee under the Indenture.

W I T N E S S E T H:

WHEREAS, the Original Deed of Trust was granted for the benefit of the Beneficiary in connection with the issuance by the Issuer of its Lease Revenue Refunding Bonds, Series 2013 A (North Side Fire Station Project), dated June 28, 2013, issued in the original aggregate principal amount of \$3,560,000 (the “Series 2013 A Bonds”);

WHEREAS, representatives of West Virginia University Hospitals, Inc., a West Virginia non-profit corporation (“WVUH”) have approached the City seeking to acquire a portion of the Premises secured by the Original Deed of Trust (“Parcel 1”) to facilitate proper access to a new healthcare facility of WVUH which is planned to be constructed on a parcel of real property immediately adjacent to the Premises;

WHEREAS, in exchange for the conveyance to WVUH of Parcel 1, WVUH will convey a like amount of its immediately adjacent real property (“Parcel 2”) to

the Issuer (the conveyance of Parcel 1 from the Issuer to WVUH and the conveyance of Parcel 2 from WVUH to the Issuer are collectively referred to herein as the “Property Exchange”);

WHEREAS, the Property Exchange will also include the execution and delivery by WVUH and the Issuer of an Easement Agreement, made and entered into as of _____, 2025 (the “Easement Agreement”), pursuant to which, among other things (i) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way for a portion of the Building Commission Property (as defined therein), (ii) the Issuer retains the right to use and enjoy the Relocated Fire Station Access Road Easement (as defined therein), (iii) WVUH conveys unto the Issuer a temporary, non-exclusive easement and right of way through a portion of the WVU Property (as defined therein) during WVUH’s construction of the Relocated Fire Station Access Road, (iv) Issuer and WVUH stipulate that each shall have a permanent, reciprocal easement with respect to the portions of the WVUH Property and Building Commission Property described therein for the purpose of construction and maintenance of utilities serving the area, and (v) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way through a portion of the Building Commission Property for the purposes of constructing, utilizing and maintaining a pedestrian sky bridge;

WHEREAS, pursuant to an ordinance enacted by the Issuer on _____, 2025 (the “Issuer Ordinance”) and an ordinance enacted by the City on _____, 2025 (the “City Ordinance”), the Issuer and the City have approved the Property Exchange and the execution and delivery of a First Supplemental Indenture of Trust, a First Supplemental Agreement and Lease and this Supplemental Deed of Trust and Security Agreement in connection with the Property Exchange; and

WHEREAS, the Beneficiary has approved and consented to the Property Exchange, and, contemporaneously with the execution of this Supplemental Deed of Trust and Security Agreement, has granted a partial release of Parcel 1 from the Premises secured by the Original Deed of Trust; and

WHEREAS, the Grantor desires to execute and deliver this Supplemental Deed of Trust and Security Agreement in order to amend the description of the Premises secured by the Original Deed of Trust to include Parcel 2 and the rights granted unto the Issuer pursuant to the Easement Agreement as described in Exhibit A hereto;

NOW, THEREFORE, in exchange for \$10 cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor covenants, represents, warrants and agrees as follows:

(A) Grantor does hereby grant and convey unto Trustee for the benefit of the Beneficiary all of its right, title and interest in the real estate described in Exhibit A hereto, which is incorporated herein by reference, in order to secure the Secured Debt described in the Original Deed of Trust under the same terms and

conditions and securing the same indebtedness as set forth in the Original Deed of Trust;

(B) This Supplemental Deed of Trust and Security Agreement shall be subject to, and subordinate in favor of, the Easement Agreement which is to be recorded in the aforesaid Clerk's Office immediately prior to the recordation of this Supplemental Deed of Trust and Security Agreement as well as that certain Partial Release and Subordination Agreement, dated _____, 2025 to be executed by Beneficiary with respect to the Secured Property (the "Partial Release"), with the intent that and to the effect that (a) this Supplemental Deed of Trust and Security Agreement shall be deemed to have been made, entered into, executed, acknowledged, delivered, and recorded in the Clerk's Office subsequent in time to the Easement Agreement, and (b) neither the Easement Agreement nor any of the easements or rights of way created, dedicated, established, or granted by or pursuant to such Easement Agreement shall be affected, cancelled, disturbed, extinguished, foreclosed, released, relinquished, or terminated, in any character, manner, or nature, by the exercise of any remedies or rights, including, without limitation, the remedy or right of foreclosure, pursuant to the Original Deed of Trust, as supplemented and amended pursuant to this Supplemental Deed of Trust and Security Agreement; and

(C) The provisions of the Original Deed of Trust are hereby in all other respects ratified and reaffirmed and shall remain in full force and effect except as expressly modified and amended hereby.

This Supplemental Deed of Trust and Security Agreement may be executed in any number of counterparts, each of which shall be an original and constitute but one and the same.

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IN WITNESS WHEREOF, the MORGANTOWN BUILDING COMMISSION and THE CITY OF MORGANTOWN have each caused this First Supplement and Amendment to Credit Line Deed of Trust, Fixture Filing and Security Agreement to be executed and attested by their respective duly authorized representatives, on the date first above written.

[SEAL]

MORGANTOWN BUILDING
COMMISSION

By: _____
Its Chair

ATTEST:

By: _____
Its Secretary

THE CITY OF MORGANTOWN

[SEAL]

By: _____
Its: Mayor

By: _____
Its: Interim City Manager

ATTEST:

By: _____
Its City Clerk

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, Chair of the MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, for said public corporation and municipal building commission.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, Mayor of THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia, on behalf of said municipal corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, Interim City Manager of THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia, on behalf of said municipal corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

This Instrument Was Prepared By:
Thomas L. Aman, Jr., Esquire
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330

**EXHIBIT A – DESCRIPTION OF PARCEL 2 AND ISSUER RIGHTS
UNDER EASEMENT AGREEMENT**

Parcel 2

A CERTAIN TRACT OR PARCEL OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a 1" iron pipe found at a corner common to West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 688), Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), Morgantown Building Commission (Tax Map 6 Parcel 74.3, Deed Book 1374 Page 630) and Morgantown Building Commission (Tax Map 6 Parcel 76.3, Deed Book 1374 Page 630), from which a ½" iron rebar found at a corner to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3) bears N 10° 08' 17" W 58.32', thence leaving said Morgantown Building Commission (Parcel 74.3 & 76.3) and with said Morgantown Building Commission (Parcel 76.4);

S 79° 51' 48" W 255.69' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said Morgantown Building Commission (Parcel 76.4) and through said West Virginia University Board of Governors (Parcel 74);

N 86° 19' 16" W 27.03' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

N 80° 34' 09" W 33.98' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said Morgantown Building Commission (Parcel 74.3) and with said West Virginia Route 705 (Van Voorhis Road);

N 09° 43' 27" W 43.47' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said West Virginia University Board of Governors (Parcel 74) for five (5) lines;

By a curve to the left having a radius of 38.50', an arc length of 15.25', and a chord bearing of S 74° 47' 46" E 15.15' to a point, thence;

S 86° 08' 46" E 6.97' to a point, thence;

S 86° 09' 56" E 149.86' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 85° 01' 08" E 59.52' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74)

and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

S 10° 08' 17" E 17.42' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being part of the real estate as conveyed from West Virginia University Board of Governors, on behalf of West Virginia University, an agency or instrumentality of the State of West Virginia, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, by Deed dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167.

Easement Agreement

All those certain rights of way, easements and other rights conveyed unto the Morgantown Building Commission by West Virginia University Hospitals, Inc. or reserved by the Morgantown Building Commission pursuant to that certain Easement Agreement, dated _____, 2025, by and between West Virginia University Hospitals, Inc. and the Morgantown Building Commission.

FIRST SUPPLEMENTAL AGREEMENT AND LEASE

between

**MORGANTOWN BUILDING COMMISSION,
Lessor**

and

**THE CITY OF MORGANTOWN,
Lessee**

Dated as of _____, 2025

Relating to:

**MORGANTOWN BUILDING COMMISSION (WEST VIRGINIA)
LEASE REVENUE REFUNDING BONDS, SERIES 2013 A
(NORTH SIDE FIRE STATION PROJECT)**

FIRST SUPPLEMENTAL AGREEMENT AND LEASE

THIS FIRST SUPPLEMENTAL AGREEMENT AND LEASE (this “Supplemental Lease”) dated as of _____, 2025, is by and between the **MORGANTOWN BUILDING COMMISSION**, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia, as lessor (the “Issuer” or “Lessor”), and **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia, as lessee (the “City” or “Lessee”), supplementing the Agreement and Lease, dated as of June 1, 2013, by and between the Issuer and the City (the “Original Lease” and together with this Supplemental Lease, the “Lease”; all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Original Lease).

RECITALS

WHEREAS, pursuant to the authority of Chapter 8, Article 33, of the Code of West Virginia, 1931, as amended (the “Act”), The City of Morgantown (the “City”) enacted an ordinance on August 16, 1988, creating the Morgantown Building Commission, a public corporation with perpetual existence and a municipal building commission within the meaning of the Act;

WHEREAS, the Issuer under the Act has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, to sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, including municipal buildings, jail facilities, police stations, fire stations, and other public buildings, and the City has heretofore deemed the design, acquisition, construction and equipping of the North Side Fire Station to be necessary and appropriate for the public interest;

WHEREAS, the Issuer has heretofore obtained title to certain real estate, situate lying and being in the City, Monongalia County, West Virginia, as described in the Original Lease in Exhibit A – Real Estate Description (the “Original Site”), and the City has acquired and constructed thereon a North Side Fire Station to provide fire protection services to the City and the City has acquired and installed certain fixtures, equipment, furnishings and other personal property within such building, or has acquired certain equipment and other personal property in connection with the use of such facility, including but not limited to a fire truck and all related appurtenances thereto (such real estate, buildings, fixtures, equipment, furnishings and other personal property within such buildings

or used in connection therewith, together with all rights of way and appurtenances thereto, herein called the “Facilities”);

WHEREAS, the Issuer under the Act has the power and authority to raise funds by the issuance and sale of revenue bonds in the manner provided by certain provisions of Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the “Revenue Bond Act”);

WHEREAS, pursuant to the Act, certain provisions of Revenue Bond Act, and an Ordinance of the Issuer enacted and adopted on November 26, 2012, as supplemented by a Supplemental Resolution adopted by the Issuer on November 26, 2012 and by a Second Supplemental Resolution adopted by the Issuer on June 6, 2013 (collectively, the “Original Ordinance”), the Issuer issued its Lease Revenue Refunding Bonds, Series 2013 A (North Side Fire Station Project), dated June 28, 2013 (the “Series 2013 A Bonds”), under an Indenture of Trust dated as of June 1, 2013 (the “Original Indenture”), between the Issuer and Wesbanco Bank, Inc. (the “Trustee”) for the purpose of, among other things, refunding the Series 2008 A Bonds which were issued to pay the costs of acquisition and construction of the Facilities;

WHEREAS, the Original Indenture was recorded in the office of the Clerk of the County Commission of Monongalia County at Trust Deed Book No. 1951, page 65;

WHEREAS, the Issuer leases the Facilities to the City pursuant to the Original Lease, which was recorded in the office of the Clerk of the County Commission of Monongalia County at Deed Book No. 1480, page 800;

WHEREAS, the Series 2013 A Bonds are payable solely from and secured by the rentals paid by the City under the Original Lease;

WHEREAS, representatives of West Virginia University Hospitals, Inc., a West Virginia non-profit corporation (“WVUH”) have approached the City seeking to acquire a portion of the Original Site (“Parcel 1”) to facilitate proper access to a new healthcare facility of WVUH which is planned to be constructed on a parcel of real property immediately adjacent to the Original Site;

WHEREAS, in exchange for the conveyance to WVUH of Parcel 1, WVUH will convey a like amount of its immediately adjacent real property (“Parcel 2”) to the Issuer (the conveyance of Parcel 1 from the Issuer to WVUH and the conveyance of Parcel 2 from WVUH to the Issuer are collectively referred to herein as the “Property Exchange”);

WHEREAS, the Property Exchange will also include the execution and delivery by WVUH and the Issuer of an Easement Agreement, made and entered into as of _____, 2025 (the “Easement Agreement”), pursuant to which, among other things (i) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way for a portion of the Building Commission Property (as defined therein), (ii) the Issuer retains the right to use and enjoy the Relocated Fire Station Access Road Easement (as defined therein), (iii) WVUH conveys unto the Issuer a temporary, non-exclusive easement and right of way through a portion of the WVU Property (as defined therein) during WVUH’s construction of the Relocated Fire Station Access Road, (iv) Issuer and WVUH stipulate that each shall have a permanent, reciprocal easement with respect to the

portions of the WVUH Property and Building Commission Property described therein for the purpose of construction and maintenance of utilities serving the area, and (v) the Issuer grants unto WVUH a perpetual, non-exclusive easement and right of way through a portion of the Building Commission Property for the purposes of constructing, utilizing and maintaining a pedestrian sky bridge;

WHEREAS, the Issuer and the Trustee have received from the City a certificate (i) requesting the Issuer to consummate the Property Exchange, (ii) requesting the Trustee’s consent to consummate the Property Exchange and execute necessary documents to complete same, (iii) finding that the Property Exchange is not detrimental to the use of the Facilities as intended, (iv) demonstrating that Parcel 1 is not necessary for the operation of the Facilities, and (v) demonstrating that the value of the Facilities is not adversely affected by the Property Exchange;

WHEREAS, the Issuer has heretofore enacted an Ordinance on _____, 2025 (the “Authorizing Ordinance”) authorizing the consummation of the Property Exchange and the execution and delivery by the Issuer of this Supplemental Lease in connection therewith;

WHEREAS, the City has heretofore enacted an Ordinance on _____, 2025 (the “City Authorizing Ordinance”) authorizing the consummation of the Property Exchange and the execution and delivery by the City of this Supplemental Lease in connection therewith;

WHEREAS, the Issuer and the City hereby agree that the real estate described in **Exhibit A** attached hereto shall be substituted for the real estate described in Exhibit A to the Original Lease and that the definition of “Site” set forth in the Original Lease shall refer to the real estate described in **Exhibit A** attached hereto; and

WHEREAS, Section 10.01 of the Original Indenture provides that the Issuer, the City and the Trustee shall consent to and effect any amendment, change or modification of the Original Lease as may be required in connection with any change which, in the sole judgment of the Trustee, based on opinion of Counsel, is not to the prejudice of the Trustee or the holders of the Bonds specifically including, but not limited to, disposition of any portion of the Facilities determined by the Issuer to no longer be necessary for the operation of the Facilities.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, the Issuer and the City, with the consent of the Trustee, agree as follows:

Section 1. The real estate, together with all equipment, furniture, fixtures, facilities, machinery, furnishings, and other personal property thereon, described in **Exhibit A** attached hereto and incorporated by reference herein, shall be substituted for the real estate described in Exhibit A to the Original Lease, and the definition of “Site” set forth in the Original Lease shall refer to the real estate described in **Exhibit A** attached hereto.

Section 2. The Trustee, based on an opinion of Counsel, hereby determines that the Property Exchange is not to the prejudice of the Trustee or the holders of the Bonds, and hereby

approves and consents to the substitution of the real estate described in **Exhibit A** attached hereto in place of the real estate described in Exhibit A to the Original Lease.

Section 3. The Lease, as supplemented by this Supplemental Lease, shall remain in full force and effect as originally executed and delivered.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, MORGANTOWN BUILDING COMMISSION, as lessor, and THE CITY OF MORGANTOWN, as lessee, have caused these presents to be signed in their respective names and on their behalf and, where appropriate, their corporate seals to be affixed and attested by their respective officers thereunto duly authorized, all as of the day and year first above written.

MORGANTOWN BUILDING COMMISSION

[SEAL]

By: _____
Its Chair

ATTEST:

By: _____
Its Secretary

THE CITY OF MORGANTOWN

[SEAL]

By: _____
Its Mayor

By: _____
Its Interim City Manager

ATTEST:

By: _____
Its City Clerk

This First Supplemental Agreement and Lease was prepared by Thomas L. Aman, Jr. of Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330.

Pursuant to Section 10.01 of the Original Indenture, Wesbanco Bank, Inc., as Trustee, hereby consents to the amendments, changes and modifications to the Original Lease effectuated by this First Supplemental Lease.

WESBANCO BANK, INC., as Trustee

By: _____
Its: _____

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, Chair of the MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, for said public corporation and building commission.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, Mayor of THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia, on behalf of said municipal corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, Interim City Manager of THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia, on behalf of said municipal corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF OHIO, TO WIT:

The foregoing instrument was acknowledged before me this _____, 2025, by _____, _____ of WESBANCO BANK, INC., as Trustee, a West Virginia banking corporation, on behalf of said corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

EXHIBIT A

REVISED REAL ESTATE DESCRIPTION

All of the following described parcels of real estate and any interests therein, together with any appurtenances located thereon, situate, lying, and being in the Morgantown Corporation District, Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, more particularly bounded and described as follows:

Parcel A

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with three lines through property of West Virginia University;

N. 10° 27' 00" W. 86.17 feet to an iron pin,

S. 76° 33' 45" W. 200.27 feet to an iron pin,

S. 10° 27' 00" E. 75.74 feet to an iron pipe;

Thence, with a line being a boundary between West Virginia University and the Monongalia County Commission, N. 79° 33' 00" E. 200.00 feet to the place of beginning, said parcel containing 0.3717 acres, as shown on a plat dated October 18, 2006, prepared by Dempsey Engineering Co.

This conveyance is made subject to all restrictions, rights of way, easements, covenants and conditions of record as contained in the chain of title.

The above described real property was conveyed to the Morgantown Building Commission by deed dated December 5, 2006, from the West Virginia University Board of Governors, on behalf of West Virginia University, of record in the Office of the Clerk of The County Commission of Monongalia County in Deed Book No. 1339, at page 408, and by a Corrective Deed dated September 30, 2008, from the West Virginia University Board of Governors, on behalf of West Virginia University, recorded in the Office of the Clerk of The County Commission of Monongalia

County on the date of record of this Deed of Trust.

Parcel B

Beginning at an iron pin which is a common corner between West Virginia University and the Monongalia County Commission; thence with a line being a boundary between West Virginia University and the Monongalia County Commission S 79° - 33' - 00" W a distance of 200.00 feet to an iron pipe; thence with three lines through the property of the Monongalia County Commission:

S 13° - 23' - 18" E a distance of 79.63 feet to an iron pin;

N 77° - 56' - 38" E a distance of 198.02 feet to an iron pin;

N 12° - 01' - 00" W a distance of 74.01 feet to the place of beginning with said parcel containing 0.3508 Acres, and shown on the attached Exhibit as "Parcel B". Said real estate being a part of Parcel 76 as shown on Morgantown Corporation Tax Map 6

Parcel C

Beginning at an iron pipe which is a common corner to parcels A & B and also a common corner to lands of West Virginia University and the Monongalia County Commission; thence with a line separating West Virginia University and the Monongalia County Commission with two calls:

S 79° - 33' - 00" W a distance of 263.77 feet to an iron pin;

N 80° - 37' - 30" W a distance of 51.16 feet to a RR spike. Said point being on the existing Right-of-Way line of Van Voorhis Road also referred to as West Virginia Route 705; thence with the Right-of-Way of Route 705 S 4° - 11' - 57" W a distance of 49.81 feet to an iron pin, said pin being a corner of West Virginia University property; thence with a line of said West Virginia University property with two calls:

S 80° - 46' - 04" E a distance of 53.23 feet to an iron pin;

N 79° - 34' - 58" E a distance of 109.00 feet to a RR spike being a corner of West Virginia University and Solomon properties; thence with two lines of Solomon;

N 79° - 30' - 22" E a distance of 141.00 feet to a PK nail in asphalt pavement;

S. $12^{\circ} - 43' - 19''$ E a distance of 119.70 feet to a bolt being the common corner of Solomon and Centra Bank; thence with three lines of Centra Bank;

S $12^{\circ} - 43' - 19''$ E a distance of 83.20 feet to an iron pin;

S $1^{\circ} - 48' - 48''$ W a distance of 228.15 feet to an iron pin;

S $49^{\circ} - 27' - 39''$ W a distance of 32.24 feet to an iron pin; said iron pin being a corner of Centra Bank and on the Right-of-Way of Elmer Prince Drive; thence with the Right-of-Way of Elmer Prince Drive S $88^{\circ} - 16' - 36''$ E a distance of 72.06 feet to an iron pin; thence leaving the Right-of-Way of Elmer Prince Drive N $41^{\circ} - 31' - 13''$ W a distance of 33.20 feet to a point on a concrete curb said point being the end of a radius; thence with a new boundary of an existing roadway on properties of the Monongalia County Commission with three calls:

N $1^{\circ} - 39' - 44''$ E a distance of 230.27 feet to a PK nail in asphalt pavement;

N $12^{\circ} - 03' - 26''$ W a distance of 172.72 feet to an iron pin also being a corner to parcel B, which is shown on the attached Exhibit; thence with parcel B and said roadway N $13^{\circ} - 23' - 18''$ W a distance of 79.63 feet to the place of beginning, said parcel containing 0.6431 Acres, and shown on the attached Exhibit as "Parcel C". And being parts of parcels 74.2 and 76 as shown on Morgantown Corporation Tax Map 6.

And both of the above Parcels B and C being the real property conveyed to the Morgantown Building Commission, by The County Commission of Monongalia County pursuant to a deed dated November 22, 2006, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1339 at Page 403.

The above-described real estate is conveyed subject to all exceptions, reservations, conditions and rights-of-way as heretofore imposed upon said realty by The County Commission of Monongalia County and its predecessors in title, including a right-of-way granted unto Steven B. Solomon and Dan L. Shearer, III, by agreement dated June 4, 1990, and of record in the office of the

Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1012 at Page 213.

The above described real estate is further conveyed with the understanding that upon the termination of the aforementioned right-of-way agreement with Steven B. Solomon and Dan L. Shearer, III, the Grantee, by and through the City of Morgantown, shall maintain the vehicular travelway addressed in the Steven B. Solomon and Dan L. Shearer, III, agreement. Also, it is understood that with the recording of this deed, the City of Morgantown shall begin maintaining the 375 foot long north/south roadway which intersects with Elmer Prince Drive and is shown on the attached Exhibit as part of Parcel C.

Provided, however, that there is excepted and reserved from the above described Parcel A, Parcel B and Parcel C, or any portion thereof, as applicable, the following described lot or parcel of land conveyed by the Morgantown Building Commission unto West Virginia University Hospitals, Inc. pursuant to a Deed of Exchange, dated _____, 2025, which lot or parcel shall not be secured pursuant to this Supplemental Indenture as follows:

ALL OF THOSE CERTAIN TRACTS OR PARCELS OF LAND SITUATE IN THE VICINITY OF WEST VIRGINIA ROUTE 705 (VAN VOORHIS ROAD) IN MORGANTOWN 7TH WARD CORP, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a railroad spike with punch found at a corner common to Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), West Virginia University Hospitals, Inc. (Tax Map 6 Parcel 76.1, Deed Book 1688 Page 9), and West Virginia University Board of Governors (Tax Map 6 Parcel 76.2, Deed Book 1424 Page 701), from which a railroad spike in concrete found at a corner to said West Virginia University Board of Governors (Parcel 76.2) and said Morgantown Building Commission (Parcel 76.4) bears N 79° 47' 53" E 140.93', thence leaving said West Virginia University Board of Governors (Parcel 76.2) and with said West

Virginia University Hospitals, Inc. (Parcel 76.1) for two (2) lines;

S 79° 54' 11" W 108.92' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 80° 38' 27" W 53.17' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said West Virginia University Hospitals, Inc. (Parcel 76.1) and with said West Virginia Route 705 (Van Voorhis Road);

N 04° 21' 52" E 46.54' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said Morgantown Building Commission (Parcel 76.4);

S 86° 19' 16" E 31.74 to a 5/8" iron rebar with cap (Thrasher) set on a line of West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 6881), thence with said West Virginia University Board of Governors (Parcel 74) for two (2) lines;

S 80° 34' 09" E 19.28' to a 3/8" iron rebar found, thence;

N 79° 51' 48" E 8.09' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia University Board of Governors (Parcel 74 and through said Morgantown Building Commission (Parcel 76.4) for two (2) lines;

S 86° 19' 16" E 57.93' to a Mag Nail set, thence;

S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

Parcel D

Beginning at a 1" iron pipe found at a corner common to West Virginia University Board of Governors (Tax Map 6 Parcel 74, Deed Book 1552 Page 688), Morgantown Building Commission (Tax Map 6 Parcel 76.4, Deed Book 1374 Page 630), Morgantown Building Commission (Tax Map 6 Parcel 74.3, Deed Book 1374 Page 630) and

Morgantown Building Commission (Tax Map 6 Parcel 76.3, Deed Book 1374 Page 630), from which a 1/2" iron rebar found at a corner to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3) bears N 10° 08' 17" W 58.32', thence leaving said Morgantown Building Commission (Parcel 74.3 & 76.3) and with said Morgantown Building Commission (Parcel 76.4);

S 79° 51' 48" W 255.69' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said Morgantown Building Commission (Parcel 76.4) and through said West Virginia University Board of Governors (Parcel 74);

N 86° 19' 16" W 27.03' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

N 80° 34' 09" W 33.98' to a 5/8" iron rebar with cap (Thrasher) set on the easterly right-of-way line of West Virginia Route 705 (Van Voorhis Road), thence leaving said Morgantown Building Commission (Parcel 74.3) and with said West Virginia Route 705 (Van Voorhis Road);

N 09° 43' 27" W 43.47' to a 5/8" iron rebar with cap (Thrasher) set, thence leaving said West Virginia Route 705 (Van Voorhis Road) and through said West Virginia University Board of Governors (Parcel 74) for five (5) lines;

By a curve to the left having a radius of 38.50', an arc length of 15.25', and a chord bearing of S 74° 47' 46" E 15.15' to a point, thence;

S 86° 08' 46" E 6.97' to a point, thence;

S 86° 09' 56" E 149.86' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 85° 01' 08" E 59.52' to a 5/8" iron rebar with cap (Thrasher) set, thence;

N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel

74.3), thence with said Morgantown Building Commission (Parcel 74.3);

S 10° 08' 17" E 17.42' to the Point of Beginning, containing 0.18 acres more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

And being part of the real estate as conveyed from West Virginia University Board of Governors, on behalf of West Virginia University, an agency or instrumentality of the State of West Virginia, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, by Deed dated December 4, 2024 and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1866, at Page 167 and thereupon conveyed by West Virginia University Hospitals, Inc. to the Morgantown Building Commission pursuant to a Deed of Exchange, dated _____, 2025 and recorded contemporaneous herewith.

Easement Agreement

All those certain rights of way, easements and other rights conveyed unto the Morgantown Building Commission by West Virginia University Hospitals, Inc. or reserved by the Morgantown Building Commission pursuant to that certain Easement Agreement, dated _____, 2025, by and between West Virginia University Hospitals, Inc. and the Morgantown Building Commission.

Ordinance No. 2025-_____

**AN ORDINANCE OF THE CITY OF MORGANTOWN
AMENDING THE CITY CHARTER
TO SUBSITUTE NONGENDERED LANGUAGE IN DESIGNATIONS OF CITY
OFFICIALS**

The City of Morgantown hereby ordains as follows:

Section 1. Findings and Purpose.

The City Council of The City of Morgantown finds and concludes that the City Charter designates and refers to city officials identified in the City Charter with masculine pronouns, and, while the City Council recognizes that City Code Section 101.03(b), in reliance upon W. Va. Code § 2-2-10, provides that a word importing the masculine gender only may be applied to females as well as male, the City Council finds and determines that the text of the City Charter should be updated to use nongendered language and avoid any indication or appearance that any person is excluded from serving in such official roles.

Section 2. Adoption of Amendment to Article II through X of the City Charter.

The succeeding provisions of the City Charter set out herein are hereby amended as follows (new matter underlined; deleted matter ~~stricken~~):

Sec. 2.02. – Compensation; expenses.

The Councilmembers may determine the salary of the Mayor and of the Councilmembers to be paid for each regular meeting they attend, but no ordinance increasing such salaries shall become effective until the date of commencement of the terms of Councilmembers elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six months. No compensation shall be allowed for special meetings, nor for any committee meetings of the Council; provided, however, that Councilmembers shall receive their actual and necessary expenses incurred in the performance of their duties. The compensation of the Mayor or of any other member of Council shall not be diminished during their ~~his~~ term of office.

Sec. 2.05. – Prohibitions.

(a) Holding Other Office. During their ~~his~~ term of office, no Councilmember shall hold any other elected public office, nor shall be employed by the City in any other capacity and no former Councilmember shall hold any compensated appointive City office or employment until one year after the expiration of the term for which they were ~~he was~~ elected to the Council. However, any member of any political executive committee shall not be deemed to hold an elected public office within the meaning of this section.

(b) Conflicts of Interest, Penalties. No member of Council shall vote upon or participate in the furtherance of any matter in which that Councilmember has, either directly or indirectly, a substantial financial or other substantial personal interest, as a member, manager, officer, bondholder or stockholder of any partnership, business, firm or corporation. Such interest shall

include, but not be limited to, an interest in any contract furnishing material, services, or supplies to the City or to any contractor, or workers ~~men~~ for the City, any sale of land to or from the City, any lease to or from the City, annulment of any street, or any special privilege or right which may inure to the benefit of such Councilmember directly or indirectly, except as such privilege may benefit them ~~him~~ generally as a citizen of the community.

Any Councilmember who willfully conceals such interest or willfully violates the requirements of this section shall be guilty of malfeasance in office and shall forfeit their ~~his~~ office. Violation of this section with the knowledge express or implied of the person, or of the corporate officer, agent or employee contracting with the City, shall render voidable by action of the City Council, any transaction prohibited by the preceding paragraph. Removal of any Councilmember for violation of the provisions of this section shall be accomplished in the manner provided by law for the removal of elected Municipal officers.

(c) Appointments and Removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officer or employee whom the Manager or any of the Manager's ~~his~~ subordinates are empowered to appoint, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to the appointment or the removal of such officer or employee.

(d) Interference with Administration. Except for the purpose of inquiries and investigations under Section 2.09, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officers or employees, either publicly or privately. Violation of this provision shall constitute ground for removal from office. It is the intention of this subsection (d) that the Council shall act in all matters as a body, and it is contrary to the spirit of this section for any of its members to seek individually to influence the official acts of the Manager, or any other officer, or employee, or for the Council or any of its members to direct or request the appointment of any person to, or any person's ~~his~~ removal from, office; or to interfere in any way with the performance by such officers or employees of their duties.

(e) Council shall not appoint or otherwise establish permanent or standing committees for the conduct of Council business.

Sec. 2.06. – Vacancies; forfeiture of office; filling of vacancies.

(a) Vacancies. The office of a Councilmember shall become vacant upon the member's ~~his~~ death, resignation, removal from office in any manner authorized by law or by this Charter or by forfeiture of the member's ~~his~~ office. A vacancy shall also exist whenever a qualified person has not been elected to a position of Councilmember under the provisions of this Charter.

(b) Forfeiture of Office. A Councilmember shall forfeit their ~~his~~ office if they ~~he~~

- (1) lacks at any time during term of office any qualification for the office prescribed by this Charter or by law,
- (2) violates any express prohibition of this Charter,
- (3) ~~is~~ are convicted of a crime involving moral turpitude, or

(4) fails to attend three consecutive regular meetings of the Council without being excused by the Council either before or after such failure of attendance.

(c) Filling of Vacancies.

(1) The filling of any vacancy in office of a Councilmember as defined under Article II shall take into account the ward wherein the member whose office has been vacated resided at the time of their ~~his~~ election, and the successor shall reside in such ward. Removal of residence from the ward shall vacate the office of the Councilmember residing in such ward at the time of election, except as provided otherwise in Section 7.05(g) of this Charter.

(2) Any such vacancy shall be filled by a majority vote of all the remaining members, who within thirty (30) days after the occurrence of the vacancy, shall appoint a qualified person to fill the vacancy. If the Council fails to do so within 30 days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than 90 days and not later than 120 days following the occurrence of the vacancy and to be otherwise governed by the provisions of Article VII.

(3) Notwithstanding the requirement in Section 2.11 that a quorum of the Council consists of four members, if at any time the membership of Council is reduced to less than four, the remaining members may by majority action appoint additional members to raise the membership to four.

Sec. 2.07. – Judge of Qualifications.

The Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of their ~~his~~ office shall be entitled to a public hearing on demand, and notice of such hearings shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the Council under this section shall be subject to review by the courts, if permitted by general law.

Sec. 2.08. – City clerk.

The City shall appoint an individual to serve as City Clerk at the will and pleasure of the Council. Except as otherwise provided in this Charter and subject to the supervision of the City Manager, the Clerk shall have the power, and it shall be their ~~his or her~~ duty to:

(1) Give notice of and attend all meetings of Council, keep the journal of its proceedings, authenticate by their ~~his or her~~ signature and record in full in a book kept for the purpose all ordinances and resolutions of the Council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection.

(2) Make and certify copies of any ordinance, resolution or order of this Council whenever required to do so, and affix the corporate seal of the City to any paper required to be sealed and to any certified copy of any paper, order or proceeding which they ~~he or she~~ may make.

(3) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice, to file and preserve the same.

(4) Have custody of and keep available for public inspection the permanent records of the City and file and properly index all records of such City officers and departments as the City Manager may direct.

(5) Perform such other duties as may be required of the City Clerk by ~~him or her~~ by this Charter, by general law, or by City ordinance or order of the City Manager not inconsistent with this Charter or with general law.

Sec. 3.01. – Appointment; qualifications; compensation.

The Council shall appoint a City Manager for an indefinite term and fix their ~~his~~ compensation. The Manager shall be appointed solely on the basis of their ~~his~~ executive and administrative qualifications. ~~He~~ They need not be a resident of the City or State at the time of their ~~his~~ appointment but must reside in the City while in office.

Sec. 3.02. – Removal.

The Council may remove the Manager from office in accordance with the following procedures:

(1) The Council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the Manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered promptly to the Manager.

(2) Within five days after a copy of the resolution is delivered to the Manager, the Manager ~~he~~ may file with the Council a written request for a public hearing. This hearing shall be held at a Council meeting not earlier than fifteen days nor later than thirty days after the request is filed. The Manager may file with the Council a written reply not later than five days before the hearing.

(3) The Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five days from the date when a copy of the preliminary resolution was delivered to the Manager, if the Manager ~~he~~ has not requested a public hearing or at any time after the public hearing if the Manager ~~he~~ has requested one.

The Manager shall continue to receive their ~~his~~ salary until the effective date of a final resolution of removal. The action of the Council in suspending or removing the Manager shall not be subject to review by any court or agency.

Sec. 3.03. – Acting City Manager.

By letter filed with the City Clerk the Manager shall designate, subject to approval of the Council, a qualified City administrative officer to exercise the powers and perform the duties of Manager during the Manager's ~~his~~ temporary absence or disability. During such absence or disability, the Council may revoke such designation at any time and appoint another officer of the City to serve until the Manager shall return or their ~~his~~ disability shall cease; however, in the event that the Manager has failed to designate an Acting Manager, the Council may by resolution appoint an officer of the City to perform the duties of the Manager until the Manager ~~he~~ shall return or their ~~his~~ disability shall cease.

Sec. 3.04. – Powers and duties of the City Manager.

The City Manager shall be the chief administrative officer of the City. ~~He~~ They shall be responsible to the Council for the administration of all City affairs placed in their ~~his~~ charge by or under this Charter. ~~He~~ They shall have the following powers and duties:

(1) ~~He shall~~ To appoint, and when ~~he deems it~~ deemed necessary for the good of the service, suspend or remove all City employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. ~~He~~ The Manager may authorize any administrative officer who is subject to their ~~his~~ direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.

(2) ~~He shall~~ To direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.

(3) ~~He shall~~ To attend all Council meetings and ~~shall have the right~~ to take part in discussion but may not vote.

(4) ~~He shall~~ To see that all laws, ordinances and provisions of this Charter and acts of the Council, subject to enforcement by the Manager ~~him~~ or by officers subject to the Manager's ~~his~~ direction and supervision, are faithfully executed and enforced.

(5) ~~He shall~~ To prepare and submit the annual budget and capital program to the Council.

(6) ~~He shall~~ To propose personnel rules, and the Council may by ordinance adopt them with or without amendment.

(7) ~~He shall~~ To submit to the Council and make available to the public complete reports on the finances and administrative activities of the City as of the end of each fiscal year. The report on finances shall be made in accordance with generally accepted accounting principles for municipal governments and agencies.

(8) ~~He shall~~ To make such other reports as the Council may require concerning the operations of City departments, offices and agencies subject to the Manager's ~~his~~ direction and supervision.

(9) ~~He shall~~ To keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as the Manager ~~he~~ deems desirable.

(10) The City Manager shall devote their ~~his~~ whole working time to the performance of the duties of the ~~his~~ office, and while occupying such office shall not engage, directly or indirectly, or be actively interested in any business which would be in conflict with the performance of their ~~his~~ duties concerning the affairs of the City of Morgantown.

(11) ~~He shall~~ To perform such other duties as are specified in this Charter or may be required by the Council.

Sec. 4.03. – Judge of the police court.

There shall be a judge of the police court who shall be a resident and qualified voter of the City. ~~He~~ They shall be appointed by, and hold office at the will of, the Council. In the event of the temporary absence or disability of the police judge, the City Manager shall appoint a person similarly qualified to serve as police judge during such absence or disability. Such appointment shall remain in effect until the next regular meeting of the Council at which time the Council shall appoint a similarly qualified person to serve during the period of such temporary absence or disability. The police court judge shall have all of the judicial powers, authorities, and duties granted to municipal courts by the laws of the State. The City Council shall fix the compensation of the police court judge.

Sec. 4.05. – Personnel system.

(a) Program and Board. The City Manager or persons assigned by the Manager him shall be responsible for implementing a sound personnel program for the City. There shall be a Personnel Board consisting of three members appointed by the Council for terms of three years from among the qualified voters of the City. Members of the Board shall hold no other City office. The City Manager shall provide necessary staff assistance for the Personnel Board.

(b) Personnel Rules. The City Manager shall prepare personnel rules and shall refer them to the Personnel Board which shall report to the Council its recommendations thereon. When approved by Council, it shall enact an ordinance adopting them, with or without amendment. These rules shall provide for:

(1) Plans, systems and projects as they relate to employee relations, personnel data systems, personnel records, employee classification, evaluation of performance and in-service training programs;

(2) The formulation of plans, advise and action to conform to applicable State and federal employment laws;

(3) The provision of a pay plan and guidelines for appointment, promotion, age of retirement and pension for City employees;

(4) Policies and procedures regulating reduction in force and removal of employees;

(5) The hours of work, attendance, regulations and provisions for sick and vacation leave;

(6) Policies and procedures governing relationships with employee organizations;

(7) Grievance procedures, including procedures for the hearing of grievances by the Personnel Board, which may render advisory opinions based on its findings to the City Manager with a copy to the employee;

(8) Provide advice and guidance to all City officials, department heads and supervisors as necessary for the administration of the City personnel system.

Sec. 5.09. – Amendments after adoption.

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the Manager that the revenues available will be insufficient to meet the amount appropriated, they he shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and their his recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose it may by ordinance reduce one or more appropriations.

Sec. 5.11. – Administration of budget.

(a) Work Programs and Allotments. At such time as the Manager shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The Manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. The Manager He may revise such allotments during the year if they he deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations made pursuant to Section 5.09.

(b) Payments and Obligations Prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made, and unless the Manager or their ~~his~~ designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provision of this Charter shall be void, and any payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and such officer ~~he~~ shall also be liable to the City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

Sec. 6.04. – Vacancies in office.

The office of a member of the Planning Commission and the office of a member of the Board of Zoning Appeals shall become vacant upon the member's ~~his~~ death, resignation, removal from office, or failure to attend three consecutive regular meetings without being excused by the Commission or by the Board, as the case may be, either before or after such failure of attendance.

Sec. 7.02. – Nominations.

(a) Petitions. Any one or more qualified voters of the City may be nominated for City Council, to be elected at large, from the ward in which he resides. Such nominations shall be by separate petition each signed by seventy-five (75) or more qualified voters residing in such ward; provided however, no voter shall sign more than one nominating petition and, if a voter signs more than one, ~~his~~ the voter's signature shall be void except as to the first filed of the petitions signed by the voter ~~him~~. The signatures to a nominating petition need not all be affixed on one paper, but to each separate paper of a petition there shall be attached a certificate executed by its circulator stating the number of signers of the paper, that each signature on it was affixed in the circulator's ~~his~~ presence and that the circulator ~~he~~ believes each signature to be the genuine signature of the person whose name it purports to be. The signatures shall be executed in ink or indelible pencil. Each signer shall indicate next to their ~~his~~ signature the date of their ~~his~~ signing and the place of their ~~his~~ residence.

Sec. 8.03. – Petitions.

(c) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that the circulator ~~he~~ personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in the circulator's ~~his~~ presence, that the circulator ~~he~~ believes them to be genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

Sec. 8.04. – Procedure after filing.

(a) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars

wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Clerk within two days after receiving the copy of the ~~his~~ certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of Section 8.03, and within five days after it is filed, the Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the Clerk shall promptly present their ~~his~~ certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

Sec. 9.01. – Personal financial interest.

Any City officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in their ~~his~~ capacity as a City officer or employee in the making of such sale or in the making or performance of such contract. Any City officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit their ~~his~~ office or position. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City Manager or the City Council.

Sec. 9.02. – Prohibitions.

(a) Activities prohibited.

(4) No person who holds any compensated appointive City position shall make, solicit or receive any contribution to the campaign funds for City elections of any political party or any candidate for City office or take any part in management, affairs or political campaign for City elections of any political party, but ~~they~~ ~~he~~ may exercise their ~~his~~ rights as a citizen to express their ~~his~~ opinions and to cast their ~~his~~ vote.

(b) Penalties.

(1) Any person who by themselves ~~himself~~ or with others willfully and/or knowingly violates any of the provisions of paragraphs (1) through (4) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or less than fifty dollars (\$50.00).

(2) Any person convicted under this section (9.02) shall be ineligible for a period of five years thereafter to hold any City office or position and, if an officer or employee of the City, shall immediately forfeit their ~~his~~ office or position.

Sec. 10.01. – Officers and employees.

(b) Continuance of Office or Employment. Except as specifically provided by this Charter, if at the time this Charter takes full effect a City administrative officer or employee holds any office or position which is or can be abolished by or under this Charter, they ~~he~~ shall continue in such office or position until the taking effect of some specific provision under this Charter directing that they ~~he~~ vacate the office or position. An employee holding a City position at the time this Charter takes full effect, who was serving in that same or comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position.

Section 3. Repeal, Savings, Severability.

Any section of this Code repealed or modified by a subsequent ordinance will continue in force until the effective date of the repealing ordinance.

The repeal or modification of any part of this Code does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this Code will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification.

The repeal of any repealing ordinance, clause, or provision does not revive any former ordinance, clause, or provision unless expressly provided by ordinance.

If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction or other entity or agency having jurisdiction to make such determination, the remainder of this Ordinance and the application to other persons or circumstances remain in effect.

Section 4. Effective date; application. This ordinance shall be effective as of April 3, 2025; subject to completion of any procedures specified by law for such ordinance to become effective. This Ordinance does not affect rights, duties, or liabilities that matured, penalties that were incurred, and proceedings that were begun, before its effective date. The law remains in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture or liability.

Section 5. Recording of ordinance. The City Clerk is directed to obtain all signatures required by the form of Ordinance adopted and maintain an executed original ordinance with the official records of the City of Morgantown, to be maintained, preserved, and accessed in accordance with the laws of the State of West Virginia and the City of Morgantown, and to take the following additional actions: Cause a copy of the amendment or amendments, ordinance, and transcript of the proceedings to be certified to the Clerk of the House of Delegates, as keeper of the rolls, and to be recorded in the office of the clerk of the county commission. The same shall be preserved by such Clerk of the House of Delegates as an authentic public record. The amendment or amendments shall take effect on the effective date specified in the notice as stated in this

Ordinance. After the effective date, all courts shall take judicial notice of such amendment or amendments.

Section 6. Notice of Public Hearing (Class II-0).

The City Clerk shall cause the proposed amendment or amendments, together with a notice of the date, time and place fixed for the hearing thereon, which shall be March 4, 2025, at City Hall Council Chambers, 389 Spruce Street, Morgantown, West Virginia, to be published as a Class II-0 legal advertisement in a qualified newspaper of general circulation in the City of Morgantown, consistent with applicable law.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____



MORGANTOWN
DEVELOPMENT SERVICES

304-284-7431
Morgantownwv.gov
430 Spruce St.
Morgantown, WV 26505

MEMORANDUM

To: J. Damien Davis, City Manager
Christine Wade, City Clerk

Cc: Ryan Simonton, City Attorney
Heather Carl, Assistant City Clerk

From: Rickie Yeager, Development Services Director

Date: January 23, 2025

Re: City Council Agenda for Zoning Map Amendment
MAP24-170 / Woodward Development, LLC / 11 Hartman Run Road

During its public hearing on November 14, 2024, the Planning Commission made a motion to forward a recommendation to Morgantown City Council that the proposed map amendment be approved. The motion passed unanimously. The proposed amendment would rezone a portion of City Tax District 14 (Sixth Ward), Tax Map 31, Parcel 16, more commonly known as 11 Hartman Run Road, from an R-1A, Single-Family Residential District and B-2, Service Business District to a B-2, Service Business District. The zoning map amendment is affiliated with an active site plan application that has been reviewed and approved by the Planning Commission and Board of Zoning Appeals with conditions.

Attached herewith is the Staff Report presented to the Planning Commission for the zoning map amendment, as well as the draft ordinance and exhibit. Please note the proposed meeting schedule for City Council, provided each ordinance advances to the next step in the review/approval process:

Committee of Whole: Tuesday, January 28, 2025 at 7:00 p.m.

Ordinance – 1st Reading: Tuesday, February 4, 2025 at 7:00 p.m.

Ordinance – 2nd Reading and Public Hearing: Tuesday, March 18, 2024 at 7:00 p.m.

In accordance with the WV State Code, there shall be at least thirty days between the first and second reading of the ordinances to rezone property.

Please include this item of business on the City Council meeting agendas noted above and include this communication and attachments in the Committee of the Whole meeting packet on January 28, 2025. Only the ordinance and associated exhibit should be included in the February 4th and March 18th City Council meeting packets provided the ordinance advances forward at each step.

This memorandum, under a cover letter explaining the public comment opportunities before City Council relating to the matter, will be sent to the petitioner.

Thank you.

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF CERTAIN PORTIONS OF PARCELS OF REAL ESTATE IN THE SIXTH WARD OF THE CITY OF MORGANTOWN, TAX DISTRICT 14, TAX MAP 31, PARCEL 16, COMMONLY KNOWN AS 11 HARTMAN RUN ROAD FROM A R-1A, SINGLE-FAMILY RESIDENTIAL DISTRICT AND B-2, SERVICE BUSINESS DISTRICT TO A B-2, SERVICE BUSINESS DISTRICT AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning designation of a portion of Tax District 14, Tax Map 31, Parcel 16 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same were fully set forth herein is reclassified from a R-1A, Single-Family Residential District and B-2, Service Business District to a B-2, Service Business District.
2. That the Official Zoning Map be accordingly changed to show said zoning classifications.

This Ordinance shall be effective from the date of adoption and the Official Zoning Map shall be duly noted with the effective date of adoption.

FIRST READING:

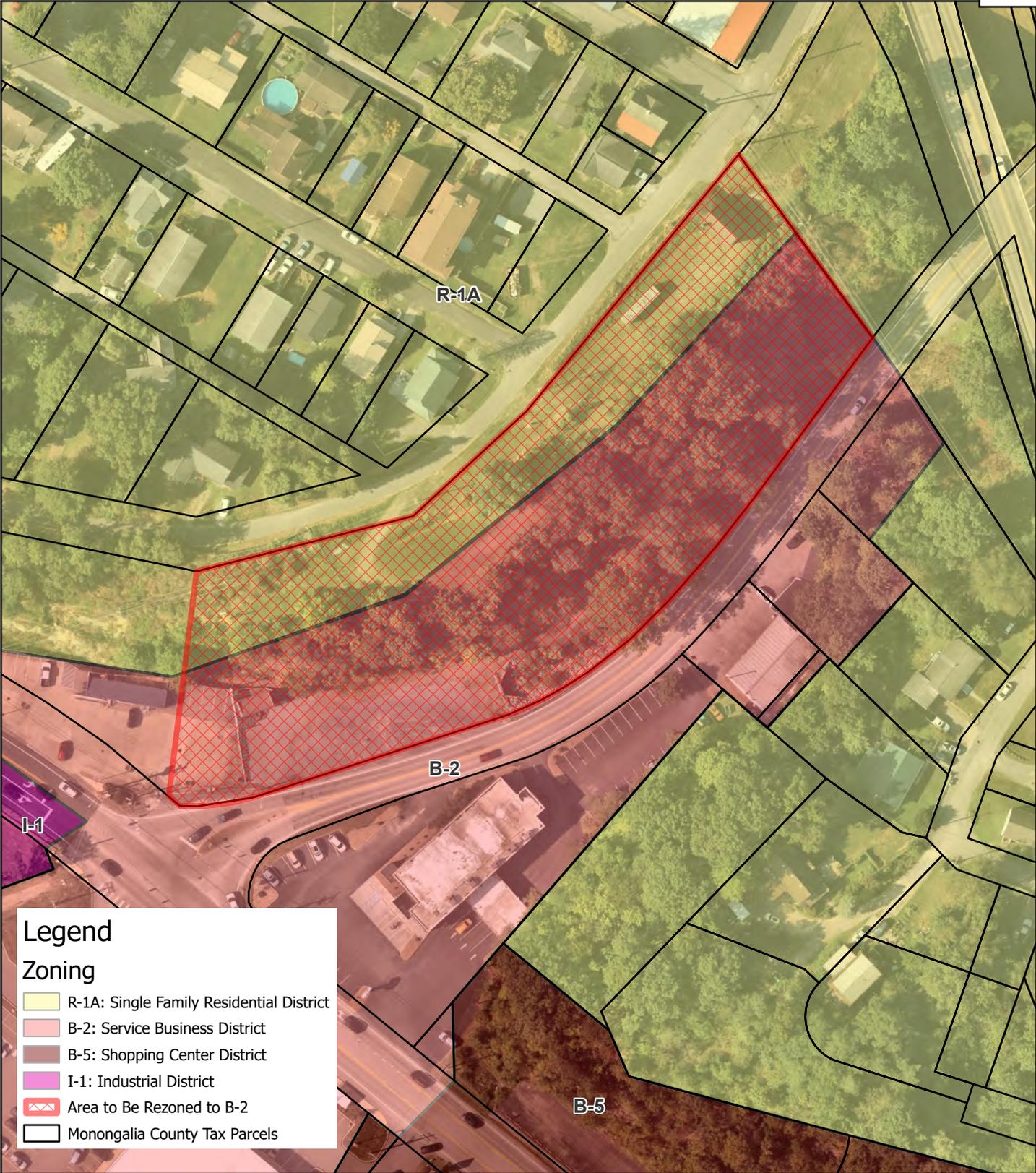
Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk



Legend

Zoning

- R-1A: Single Family Residential District
- B-2: Service Business District
- B-5: Shopping Center District
- I-1: Industrial District
- Area to Be Rezoned to B-2
- Monongalia County Tax Parcels

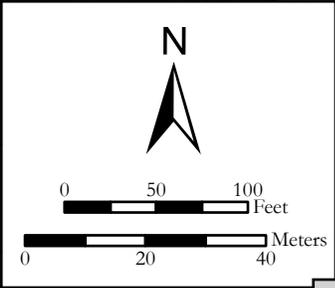


Exhibit:
MAP24-000170 / Woodward Development LLC
Parcel 14-31-16 / 11 Hartman Run Road

Map Created By: Veronica Balcer, Geospatial Technician. Credits: Copyright nearmap 2015, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

2025

Coordinate System: NAD 1983 StatePlane West Virginia North FIPS 4701 Feet





MORGANTOWN PLANNING COMMISSION

November 14, 2024

6:30 p.m.

City Hall – City Council Chambers | 389 Spruce Street – 2nd FL

STAFF REPORT

President:

Peter DeMasters, 6th Ward

Vice-President:

Bill Petros, 4th Ward

Planning Commissioners:

Darren Taylor, 1st Ward

Tim Stranko, 2nd Ward

Vacant, 3rd Ward

Brennan Williams, 5th Ward

Danielle Trumble,
City Council

Katie See, 7th Ward

Kelly Palmer, City Admin.

CASE NO: MAP24-170 / Woodward Development, LLC /
11 Hartman Run Road.

REQUEST AND LOCATION:

Request by Mr. Woodward to rezone the easterly portion of City Tax District 14 (Fifth Ward), Tax Map 31, Parcel 16, more commonly known as 11 Hartman Run road, from a B-2, Service Business District and R-1A, Single-Family Residential District, to a B-2, Service Business District.

SURROUNDING ZONING:

North: R-1A, Single-Family Residential District.

South: B-2, Service Business District; B-5, Shopping Center District; R-1A, Single-Family Residential District

East: B-2, Service Business District; R-1A, Single-Family Residential District.

West: R-1A, Single-Family Residential District; R-2, Single and Two-Family Residential District; I-1 Industrial District

BACKGROUND and ANALYSIS:

On February 8, 2024, the Planning Commission approved the applicant’s request to subdivide Tax District 11, Tax Map 31, Parcel 16, more commonly known as 11 Hartman Run Road into two parcels of land. After review, the Planning Commission approved the applicant’s with the following condition:

1. The applicant submits a revised survey plat that identifies the two zoning designations, as well as a legal description for the new parcel of land and petitions the Planning Commission to rezone the new parcel of land to a B-2, Service Business District.

In keeping with the Commission’s request, the applicant has applied to rezone the easterly portion of Parcel 16 from a split-zoned district to a B-2, Service Business District. The portion of property to be rezoned is approximately 2.215 acres of land. The applicant/property owner intends to build a new 2,000 square foot building on the site to operate a medical cannabis dispensary and drive through facility. Please see the staff enhanced aerial and zoning maps below of the subject site:

Development Services

Rickie Yeager, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

November 14, 2024
6:30 p.m.

City Hall – City Council Chambers | 389 Spruce Street – 2nd FL

President:

Peter DeMasters, 6th Ward

Vice-President:

Bill Petros, 4th Ward

Planning Commissioners:

Darren Taylor, 1st Ward

Tim Stranko, 2nd Ward

Vacant, 3rd Ward

Brennan Williams, 5th Ward

Danielle Trumble,
City Council

Katie See, 7th Ward

Kelly Palmer, City Admin.



Source: Monongalia County Parcel Viewer Map

Development Services

Rickie Yeager, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

November 14, 2024
6:30 p.m.

City Hall – City Council Chambers | 389 Spruce Street – 2nd FL

President:

Peter DeMasters, 6th Ward

Vice-President:

Bill Petros, 4th Ward

Planning Commissioners:

Darren Taylor, 1st Ward

Tim Stranko, 2nd Ward

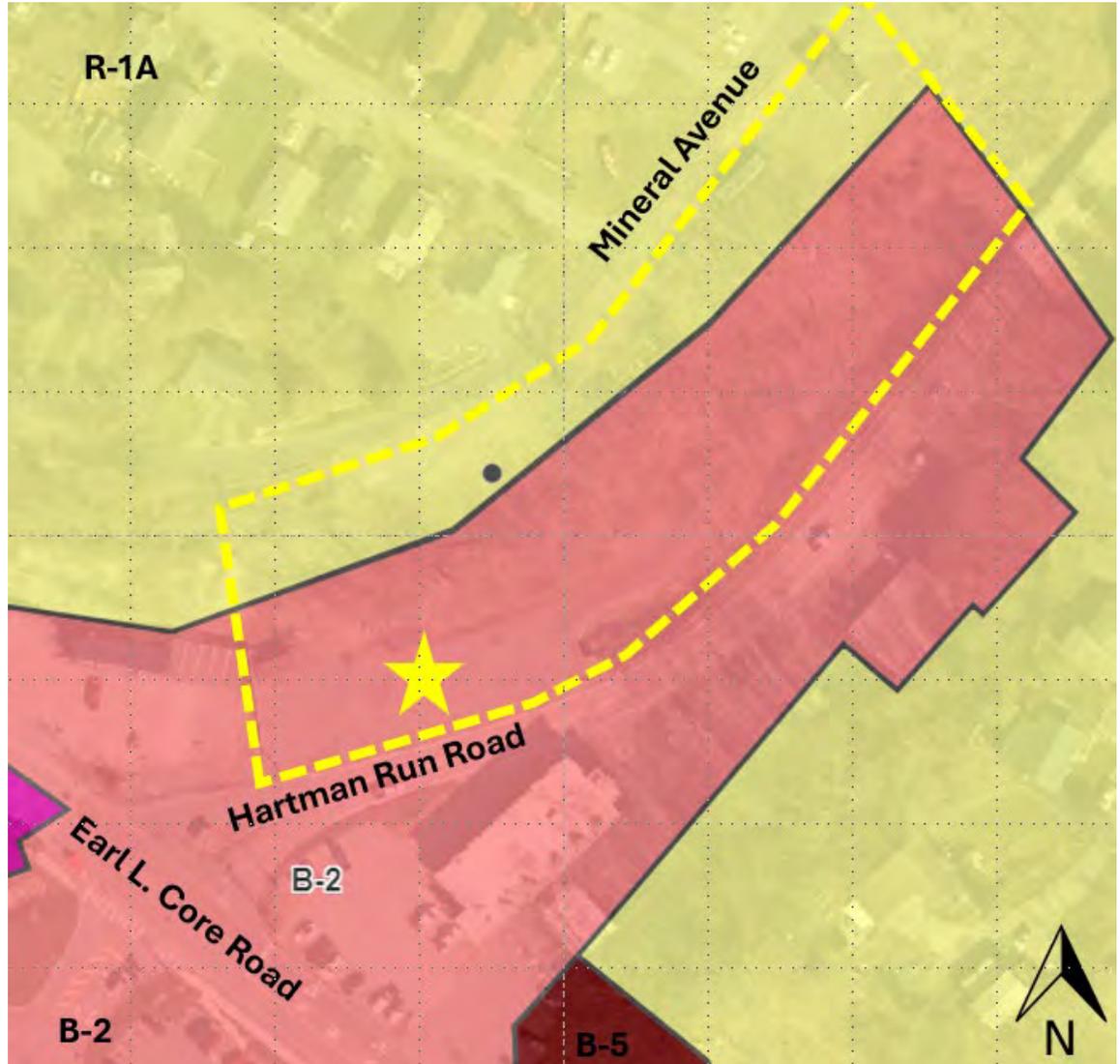
Vacant, 3rd Ward

Brennan Williams, 5th Ward

Danielle Trumble,
City Council

Katie See, 7th Ward

Kelly Palmer, City Admin.



Source: Morgantown Arc-GIS Zoning Map

A Medical Cannabis Dispensary use is defined in Section 1329 of the City’s Planning and Zoning Code as *a place where processed medical cannabis products are permitted to be sold to qualifying consumers, as provided for in the Code of West Virginia Chapter 16A, as amended.*

A medical cannabis dispensary use is permitted by-right in a B-2 District, while a drive through facility is considered an accessory use per Table 1331.05.01 of the City’s Planning and Zoning Code.

Development Services

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2023 COMPREHENSIVE PLAN (MORGANTOWN 2033)

The Land Management Plan in Morgantown 2033 identified the above referenced property having the pattern and character of a **Residential: Type 1**. According to the Comprehensive Plan, *these areas encompass most of the city’s historic neighborhoods and have the highest density of buildings on the smallest lots within walkable grids of streets. The district contains a mix of housing types ranging from older single family homes to small, multi-unit apartment buildings. In addition to residential uses, small-scale commercial uses may exist along major corridors.*

After review and given the topography of the property, at least the lower portion of the subject site should have been characterized as an existing Commercial Area, as it is situated along a major commercial corridor (Earl L. Core Road) and across the street from property developed for commercial uses. Commercial Area is defined by the Comprehensive Plan as an area that *consists of auto-oriented commercial areas dominated by single-story, single use buildings setback from the street and parking areas facing the street. These areas are typically located along corridors that are generally not pedestrian friendly due to lack of sidewalks, long block lengths and many vehicle access points (curb cuts) which create conflicts for pedestrians.*

Second, the plan’s Growth Framework: Key Opportunities map recommends that the general area described above *continue to improve housing and neighborhood amenities to encourage a mix of students, residents, and residential building types, and revitalize major commercial corridors and underutilized sites to support walkable and attractive mix of commercial and residential uses.*

Third, the City’s Future Land Map (Land Management Plan) identifies the properties to be rezoned as **Corridor Mixed-Use**. Below is a description of the classification for this area:

Corridor mixed-use areas are located along major gateway roads into the City and may comprise a mix of housing, office, commercial, and/or civic uses adjacent to one another or within the same structure (such as offices or apartments above ground floor retail). Parking should be located behind or to the side of buildings and may be shared between multiple uses.

Please see the excerpt from the Comprehensive Plan below that shows what development typologies are generally permitted in the Corridor Mixed-Use district:

Development Services

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Director

Planning Division

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Vacant, 3rd Ward

Brennan Williams, 5th Ward

Danielle Trumble,
City Council

Katie See, 7th Ward

Kelly Palmer, City Admin.

| Land Management Type | Compatible Use Types | | | | | | | | |
|------------------------------|----------------------|----|----|----|---|----|---|---|----|
| | SF | TF | MF | CI | C | AC | O | I | OS |
| Downtown | | | | | | | | | |
| Riverfront Mixed-Use | | | | | | | | | |
| Residential Mixed-Use | | | | | | | | | |
| Corridor Mixed-Use | | | | | | | | | |
| Business & Technology | | | | | | | | | |
| High-Intensity Residential | | | | | | | | | |
| Medium-Intensity Residential | | | | | | | | | |
| Low-Intensity Residential | | | | | | | | | |
| WVU | | | | | | | | | |
| Open Space | | | | | | | | | |

SF: Single-Family Dwelling

TF: Two-Family Dwelling

MF: Multi-Family Dwellings (Apartments, Townhouses)

CI: Civic/Institutional (Schools, Government Buildings, Churches, Etc.)

C: Commercial (Retail, Restaurant and Accommodation)

AC: Accessory Commercial (Residential Compatible Retail and Restaurant)

O: Office

I: Industrial (Light Industrial/ Manufacturing, Warehouse)

OS: Open Space (Parks, Recreation Areas)

Please see Addendum A to review the Character Area, Growth Framework and Land Management Plan Maps associated with the subject site.

The Land Management Plan also set forth *eleven principles that describe the intent about how (character attributes) and where (conceptual location) growth and development in Morgantown should occur.* The principles are also designed to *help guide the City on how to use land resources in a more efficient manner to foster high quality, distinct sense of place.*

The proposed zoning map amendment appears to be consistent with the following principle:

- Support the redevelopment of “underutilized” gray-field sites along community corridors. Community corridors are commercial areas located along - or encompassing - transportation facilities, such as the Mountain Line or PRT stops. It is preferable to accommodate growth within zones already appropriate for increased development densities and are - or could be - transit accessible. Establish neighborhood business districts/corridors to support existing residential neighborhoods.*

Additionally, the proposed amendment in keeping with the following Land Management Strategy and Action item:

LM-2.1 Promote the redevelopment of underutilized or functionally obsolete areas (see ED-2.1).

Development Services

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November 14, 2024
6:30 p.m.

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Brennan Williams, 5th Ward

Danielle Trumble,
City Council

Katie See, 7th Ward

Kelly Palmer, City Admin.

LM-2.1A Work more actively with private sector partners to use their expertise to physically and economically analyze underutilized properties and develop strategies for reusing them.

STAFF RECOMMENDATION:

Zoning map amendment requests should be evaluated on their land use merits alone. Development intentions are extraneous, and the Commission should consider the request on its merits as a land use decision. In conducting such an analysis, the Commission should determine if the R-3, Multifamily Residential District is the appropriate zoning classification for the premises, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1339 – R-3, Multifamily Residential District and Table 1331.05.01 - Permitted Land Uses.

After review, staff finds the proposed zoning map amendment to be consistent with the City’s 2023 Comprehensive Plan with respect to and goals set forth in the Land Management Plan, as well as Character Area, Growth Framework and Land Management Plan (Future Land Use Map). As such, staff recommends approval of the zoning map amendment, as requested by the applicant.

Development Services

Rickie Yeager, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

MAP24-170 / Woodward Development, LLC / 11 Hartman Run Road

Addendum A

Pattern and Character Map

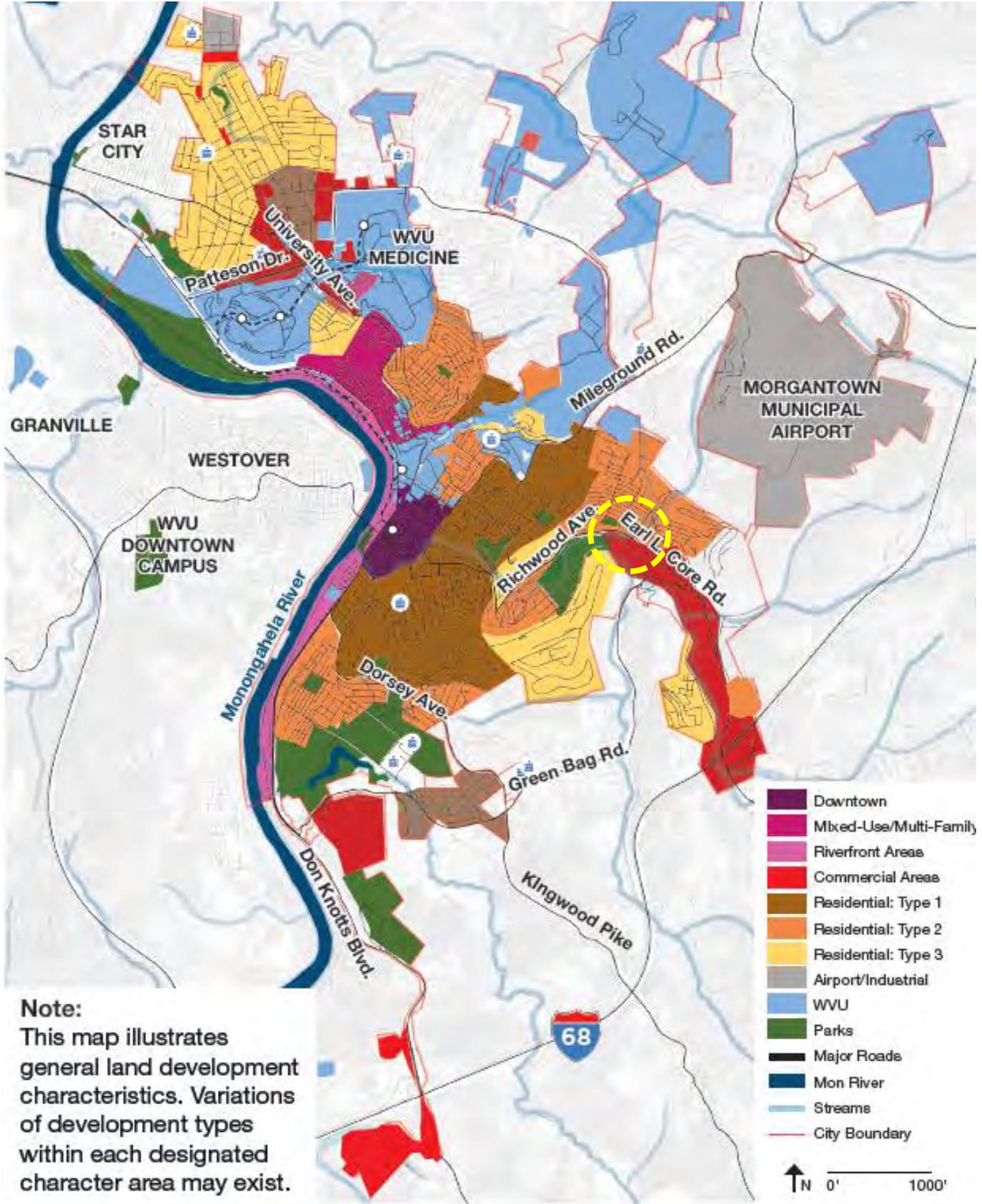
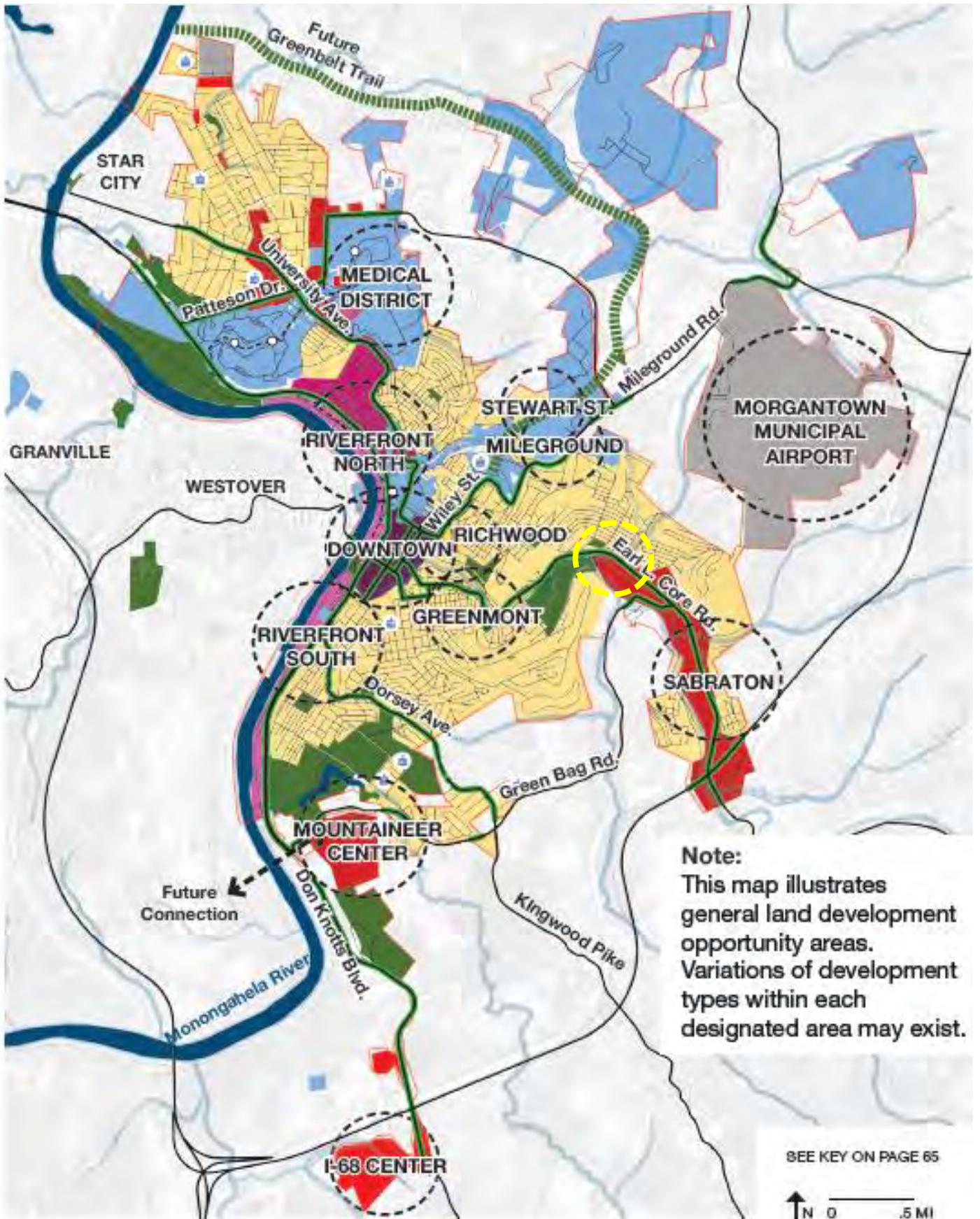


Figure LM-6: Existing development character areas



Subject Site

Growth Framework Map



 Subject Site

Land Management (Future Land Use) Map

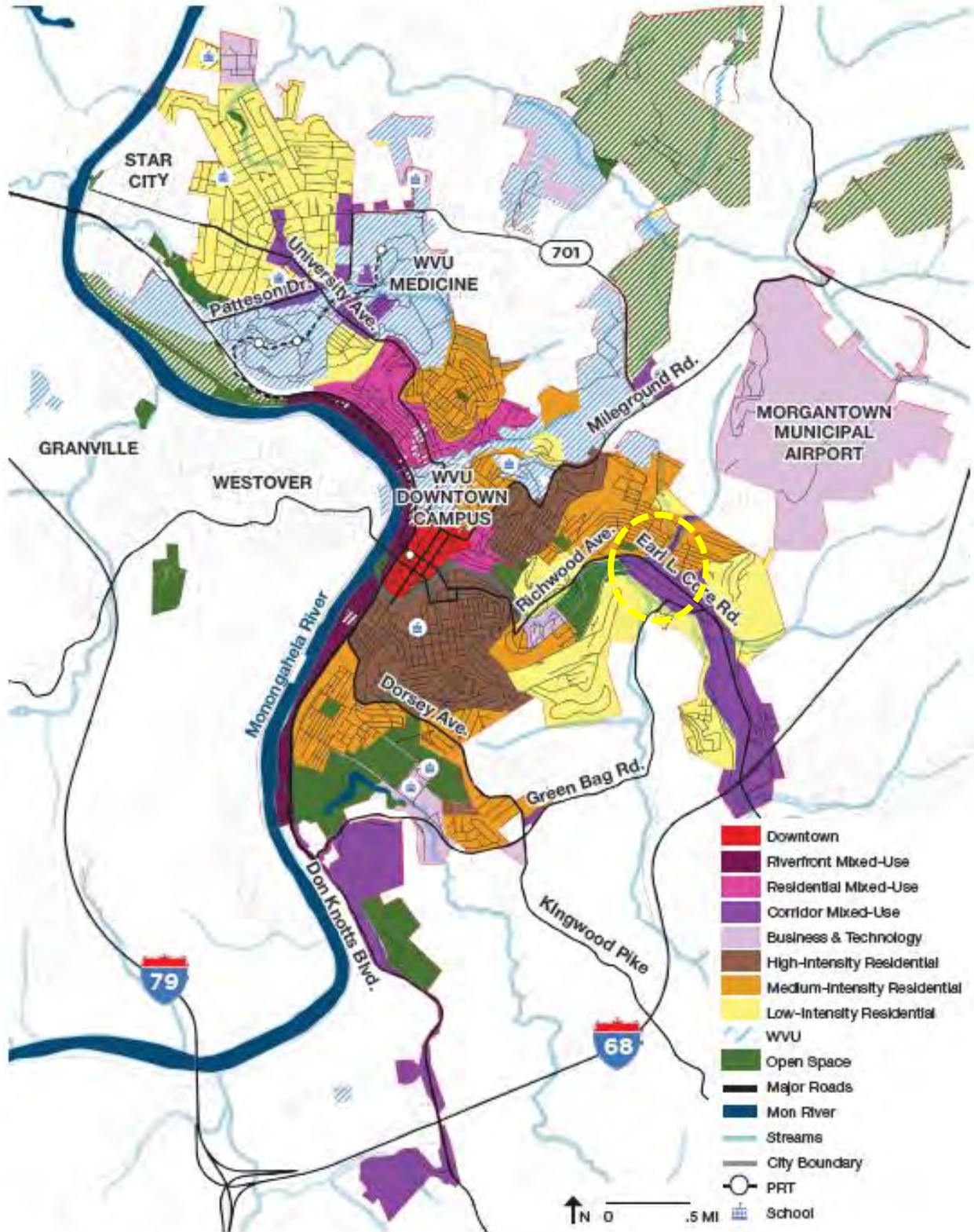


Figure LM-10: Land management plan

 Subject Site

MAP24-170 – Application and Supporting Documents

Zoning Map Amendment - ZONMAPAMND

Street Addressed (if assigned): 

Text 41 / 60

11 Hartman Run Road, Morgantown, WV 26505

Tax Map Number: 

Text 4 / 60

0031

Parcel Number: 

Text 4 / 60

0016

Size (Acres): 

Number 0 / 60

3.47

Current Zoning Classification: 

Text 12 / 60

R-1A and B-2

Proposed Zoning Classification: 

Text 3 / 60

B-2

Current Land Use: 

Comment

vacant

Proposed Land Use: 

Comment

medical cannabis dispensary



MORGANTOWN PLANNING COMMISSION

December 12, 2024
6:30 p.m.

Monongalia County Commission Chambers | 243 High Street – 2nd FL

STAFF REPORT

President:

Peter DeMasters, 6th Ward

Vice-President:

Bill Petros, 4th Ward

Planning Commissioners:

Katie See, 1st Ward

Tim Stranko, 2nd Ward

William Blosser, 3rd Ward

Vacant, 5th Ward

Danielle Trumble, City Council

Vacant, 7th Ward

Kelly Palmer, City Admin.

CASE NO: MNS24-01 / Woodward Development, LLC /
11 Hartman Run Road

REQUEST, LOCATION, TAZ MAP AND ZONING DESCRIPTION:

Request by Devon Shrewsbury on behalf of Woodward Development, LLC for a minor subdivision of City Tax District 14, Tax Map 31, Parcel 16, more commonly known as 11 Hartman Run Road, into two parcels of land; B-2, Service Business District and R-1A, Single-Family Residential District.

SURROUNDING ZONING:

North: R-1A, Single-Family Residential District

East: R-1A, Single-Family Residential District

South: B-2, Service Business District and B-5, Shopping Center District

West: R-1A, Single-Family Residential District and I-1, Industrial District

BACKGROUND and ANALYSIS:

On February 8, 2024, the Planning Commission approved the applicant’s request to divide City Tax District 14, Tax Map 31, Parcel 16 into two (2) parcels of land. For a map of the subject site, please see Addendum and the associated staff report from February 8, 2024. The Planning Commission’s approval, however, was contingent on the following conditions:

1. The applicant submits a revised survey plat that identifies the two zoning designations, as well as a legal description for the new parcel of land and petitions the Planning Commission to rezone the new parcel of land to a B-2, Service Business District.
2. The applicant submits a letter of service availability to staff from the Morgantown Utility Board regarding water, sewer, and stormwater services for the proposed and residual portions of land.
3. That the applicant submits at least three (3) original final plat documents, including all access/utility easements, signed, and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President’s signature.
4. That the final plat is recorded at the Monongalia County Courthouse within thirty (30) days of receiving the executed plat.

Since February, the applicant has submitted a petition to rezone the property (Case No. MAP24-170) and an application for Type III-DSI Site Plan (Case No. SP24-172) approval. While the Commission recently approved both applications, the site plan was approved with conditions, the most germane to this case was the following:

Development Services

Rickie Yeager, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

December 12, 2024

6:30 p.m.

Monongalia County Commission Chambers | 243 High Street – 2nd FL

President:

Peter DeMasters, 6th Ward

Vice-President:

Bill Petros, 4th Ward

Planning Commissioners:

Katie See, 1st Ward

Tim Stranko, 2nd Ward

William Blosser, 3rd Ward

Vacant, 5th Ward

Danielle Trumble, City Council

Vacant, 7th Ward

Kelly Palmer, City Admin.

Section 1347.04 – Setbacks and encroachments

(a) The following setbacks shall be required for all principal structures, except as otherwise provided in Section 1363.02(b), Yard, Building Setbacks and Open Space Exceptions:

- (1) Minimum front setback:15 feet
- (2) Maximum front setback:30 feet
- (3) Minimum side setback:5 feet on one side and 20 feet on the side where any access drives are located
- (4) Minimum rear setback:40 feet

STAFF RECOMMENDATION:

After review, and in keeping with the previous recommendations outlined in the staff report dated February 8, 2024, staff recommends that the revised minor subdivision application be approved by the Planning Commission with the following conditions:

- 1. The applicant submits a revised survey (final) plat that shows the property to be subdivided and demarcates the two zoning designations associated therewith, as well as a legal description for the new and residual parcels of land;
- 2. The applicant submits a letter of service availability to staff from the Morgantown Utility Board regarding water, sewer and stormwater services for the two parcels of land.
- 3. That the applicant submits at least three (3) original final plat documents, including all access/utility easements, signed, and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President’s signature.
- 4. That the final plat is recorded at the Monongalia County Courthouse within thirty (30) days of receiving the executed plat.

Development Services

Rickie Yeager, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
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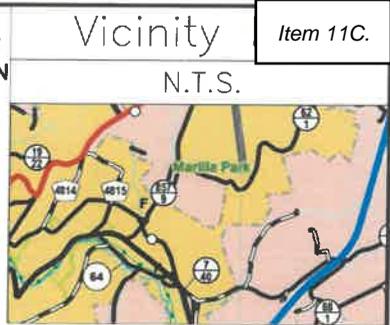
BEARINGS DEPICTED
HEREON ARE BASED UPON
WV NORTH SPCS, NAD 83



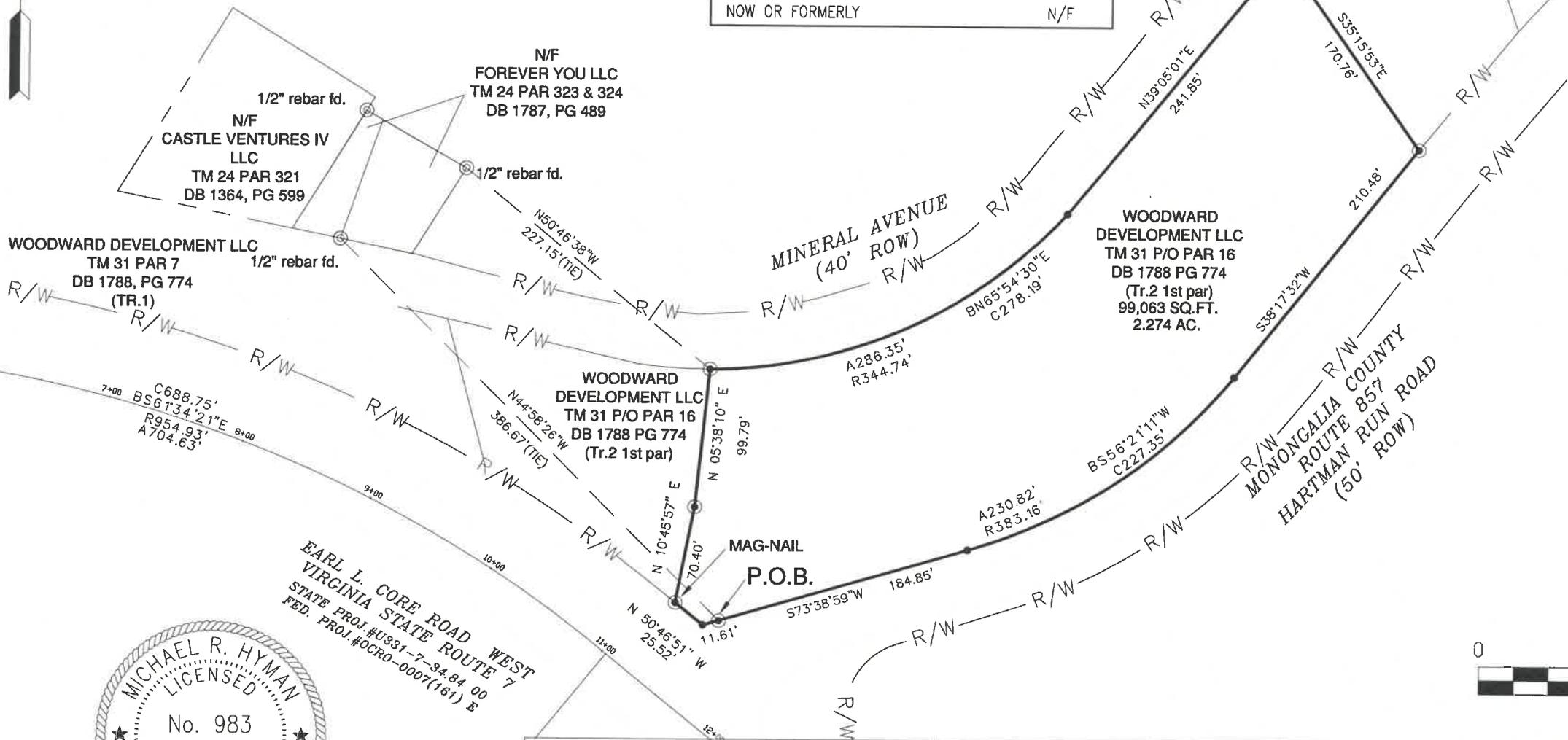
LEGEND

| | |
|-------------------------------------|--|
| EDGE OF ROAD | |
| RIGHT OF WAY | |
| ADJOINER LINE | |
| BOUNDARY LINE | |
| MONUMENT FOUND (AS NOTED) | |
| 5/8" REBAR & CAP SET (UNLESS NOTED) | |
| COMPUTED POINT | |
| NOW OR FORMERLY | |

WEST VIRGINIA
DEPARTMENT OF
TRANSPORTATION
TM 24 PAR 327.4
DB 1463, PG 344



Vicinity
N.T.S.
Item 11C.



MICHAEL R. HYMAN, PS, #983
DATE 12/10/24

BEARINGS DEPICTED HEREON ARE BASED
UPON WV NORTH SPCS, NAD 83

ASCENT CONSULTING AND ENGINEERING, LLC
PHONE: (304) 933-3463
1700 ANMOORE ROAD
BRIDGEPORT, WV 26330
WWW.ASCENTWV.COM



PLAT OF SURVEY FOR WOODWARD DEVELOPMENT LLC SHOWING A SUBDIVISION OF TAX PARCEL 16

| | | | | |
|-----------------|------------|--------------|-----|-----------|
| DATE: | 12-10-2024 | DRAWN BY: | JRS | SHEET No. |
| DRAWING SCALE: | AS SHOWN | CHECKED BY: | MRH | |
| PROJECT NUMBER: | 3881 | APPROVED BY: | MRH | |

STAFF REPORT ADDENDUM A

MNS24-01 / Woodward Development, LLC / 11 Hartman Run Road

Staff Report – February 8, 2024



MORGANTOWN PLANNING COMMISSION

February 8, 2024
6:30 p.m.

Monongalia County Commission Chambers | 243 High Street – 2nd FL

STAFF REPORT

President:

Peter DeMasters, 6th Ward

Vice-President:

Bill Petros, 4th Ward

Planning Commissioners:

Katie See, 1st Ward

Tim Stranko, 2nd Ward

William Blosser, 3rd Ward

Vacant, 5th Ward

Danielle Trumble, City Council

Vacant, 7th Ward

Kelly Palmer, City Admin.

CASE NO: MNS24-01 / Woodward Development, LLC /
11 Hartman Run Road

REQUEST, LOCATION, TAZ MAP AND ZONING DESCRIPTION:

Request by Devon Shrewsbury on behalf of Woodward Development, LLC for a minor subdivision of City Tax District 14, Tax Map 31, Parcel 16, more commonly known as 11 Hartman Run Road, into two parcels of land; B-2, Service Business District and R-1A, Single-Family Residential District.

SURROUNDING ZONING:

North: R-1A, Single-Family Residential District

East: R-1A, Single-Family Residential District

South: B-2, Service Business District and B-5, Shopping Center District

West: R-1A, Single-Family Residential District and I-1, Industrial District

BACKGROUND and ANALYSIS:

The applicant seeks to develop a medical cannabis dispensary on the easterly portion of 11 Hartman Run Road. Since the property already has an existing (nonconforming) use, the applicant is requesting that the property be subdivided to establish a new use. While an application for a Type II Site Plan was submitted to the Development Services Department, staff has and/or will be requesting additional information from the applicant before a Technical Review Committee Meeting is scheduled with various City Agencies (Code Enforcement Division, Engineering and Public Works Department, Morgantown Utility Board, Fire Marshall, etc.).

Please be aware that the existing property is split zoned. The lower (flat) portion of the property adjacent to Earl Core Road and Hartman Run Road is zoned B-2, Service Business District. The hillside and portion of property adjacent to Mineral Avenue is zoned R-1A, Single-Family Residential District. Since the property currently has two zoning designations, staff used the applicant's plat and Monongalia Parcel Viewer map to determine if the proposed subdivision was consistent with the minimum lot provisions in the B-2 District. After review, please note the following analysis below:

Section 1347.03 – Lot Provisions

- (a) The minimum lot size shall be 6,000 square feet.
- (b) The minimum lot frontage shall be 60 feet.
- (c) The minimum lot depth shall be 100 feet.
- (d) Maximum lot coverage shall be 60 percent.

New Parcel Compliance:

- Yes (94,504 sq. ft.)
- Yes (Approx. 600 ft.)
- Yes (Approx. 100 ft.)
- N/A

Development Services

Rickie Yeager, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



MORGANTOWN PLANNING COMMISSION

February 5, 2024
6:30 p.m.

Monongalia County Commission Chambers | 243 High Street – 2nd FL

President:
Peter DeMasters, 6th Ward

Vice-President:
Bill Petros, 4th Ward

Planning Commissioners:
Katie See, 1st Ward
Tim Stranko, 2nd Ward
William Blosser, 3rd Ward
Vacant, 5th Ward
Danielle Trumble, City Council
Vacant, 7th Ward
Kelly Palmer, City Admin.

Section 1347.03 – Lot Provisions

- (e) The minimum lot size shall be 6,000 square feet.
- (f) The minimum lot frontage shall be 60 feet.
- (g) The minimum lot depth shall be 100 feet.
- (h) Maximum lot coverage shall be 60 percent.

Residual Parcel Compliance:

- Yes (Approx. 13,000 sq. ft.)
- Yes (Approx. 255 ft.)
- Yes (Approx. 100 ft.)
- Yes (Approx. 6.8 %)

What is not consistent with best practices, from a zoning perspective, is that the subdivision and residual portions of property will have two different zoning designations. If the property to be developed is not rezoned to one zone, the owner will have to make sure the subdivision plat and/or site plan accurately reflects each zoning designation to determine setback and encroachment requirements in the B-2 District (Section 1347.04 of the City’s Planning and Zoning Code.

Please further note that the applicant did not provide a letter of service availability from the Morgantown Utility Board regarding water, sewer and stormwater services.

STAFF RECOMMENDATION:

After review, staff recommends that the minor subdivision (lot consolidation) application be approved by the Planning Commission with the following conditions:

1. The applicant submits a revised survey plat that shows the property to be subdivided and demarcates the two zoning designations associated therewith, as well as a legal description for the new parcel of land; or

The applicant submits a revised survey plat that identifies the two zoning designations, as well as a legal description for the new parcel of land and petitions the Planning Commission to rezone the new parcel of land to a B-2, Service Business District.

2. The applicant submits a letter of service availability to staff from the Morgantown Utility Board regarding water, sewer and stormwater services for the proposed and residual portions of land.
3. That the applicant submits at least three (3) original final plat documents, including all access/utility easements, signed, and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President’s signature.
4. That the final plat is recorded at the Monongalia County Courthouse within thirty (30) days of receiving the executed plat.

Development Services
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Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
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STAFF REPORT ADDENDUM A

MNS24-01 / Woodward Development, LLC / 11 Hartman Run Road

Staff Enhanced Site Area Map:

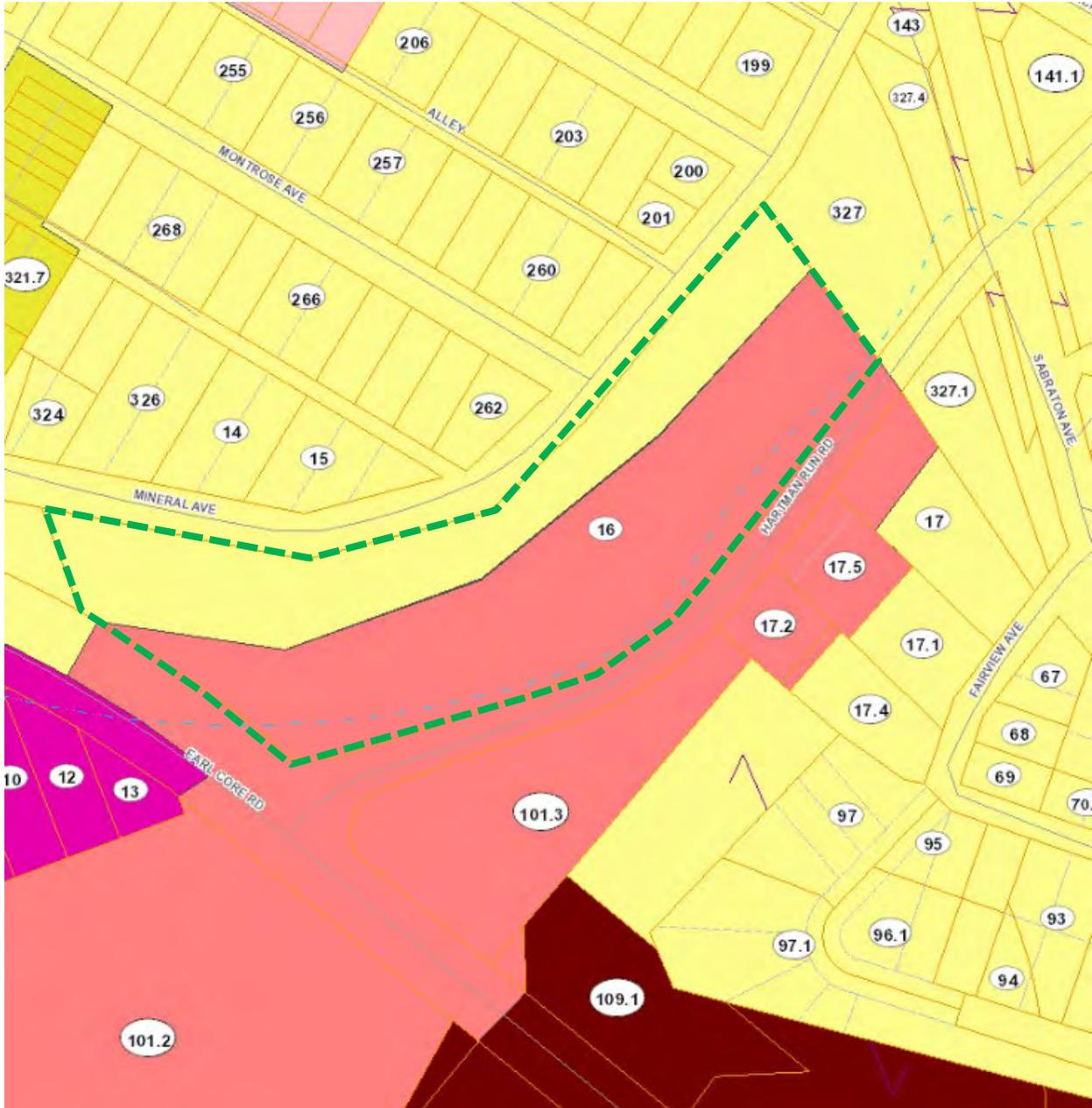


Source: Monogalia County Parcel Viewer Map

STAFF REPORT ADDENDUM A

MNS24-01 / Woodward Development, LLC / 11 Hartman Run Road

Staff Enhanced Morgantown Zoning Map:



Source: Monongalia County Parcel Viewer Map

STAFF REPORT ADDENDUM A

MNS24-01 / Woodward Development, LLC / 11 Hartman Run Road

Google Street View (Looking Northeast from Earl Core Road and Hartman Run Road)



Google Street View (Looking North from Hartman Run Road)





OFFICE USE
CASE NO. *MNS 24-01*

APPLICATION FOR MINOR SUBDIVISION

V. PLAT

Preliminary Plat submission – A Minor Subdivision Application must also include one (1) preliminary plat illustrating:

- (a) Existing and proposed property boundaries, property boundary dimensions, and square footage.
- (b) A letter of service availability and approval from the Morgantown Utility Board.

Final Plat submission – Upon approval by the Planning Commission, three (3) sealed Final Plat surveys must be submitted to the Planning Office and meet the following standards:

- (a) Drawn to a scale of one inch (1") equals fifty feet (50') or larger;
- (b) Date of preparation, north arrow, and scale;
- (c) Legal description;
- (d) Applicant/owner name and address;
- (e) Existing zoning;
- (f) Legend;
- (g) Vicinity map;
- (h) Existing and proposed utility lines and easements;
- (i) Certification by a registered land surveyor, licensed in the State of West Virginia, that the dimension and bearings are accurately delineated with a seal and signature;
- (j) Location, shape, exterior dimensions of each existing building on the site(s);
- (k) Location and dimensions of paved surfaces including sidewalks and curb cuts, and of all abutting streets;
- (l) Location of springs, streams, other water bodies, and areas subject to flooding;
- (m) Floodplain designation making reference to pertinent FEMA Firm Community Panel Number;
- (n) Approval signature block allowing space for President of Morgantown Planning Commission;
- (o) Other items as deemed necessary by Planner Director or City Engineer.

Please note that all approved minor subdivision plats must be filed with the Monongalia County Tax Office within thirty (30) days of approval. Plats not filed within thirty (30) days will be considered invalid by the City of Morgantown and will require a new application.

VIII. ATTEST

I hereby certify that I have read and examined this document and know the same to be true and correct. All provisions of laws and ordinance governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction.

Devon R. Shrewsbury

Devon R. Shrewsbury

01/22/2024

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date

Ordinance No. 2025-____

**AN ORDINANCE OF THE CITY OF MORGANTOWN
AUTHORIZING A COMMERCIAL LEASE AND OPERATING AGREEMENT
WITH SHAFT DRILLERS INTERNATIONAL AT THE
MORGANTOWN MUNICIPAL AIRPORT**

The City of Morgantown hereby ordains as follows:

Section 1. Findings and Purpose.

The City Council finds and determines that it is within the authority of the City Council to authorize transfers of interests in realty and further finds and determines that it is in the interest of the City of Morgantown to promote productive use of the Morgantown Municipal Airport and further development of the facilities and services thereon by authorizing the commercial lease and operating agreement described in this Ordinance.

Section 2. Authorizing Commercial Lease and Operating Agreement.

The City Manager is authorized to execute a commercial lease and operating agreement with Shaft Drillers International LLC, substantially in the form and substance of the documents enclosed with this Ordinance, and to take such other actions and execute such other documents as may be necessary and helpful to accomplishing the purposes thereof; and is further authorized to take any actions pursuant to the lease and operating agreement that the City is authorized to take pursuant to the lease and operating agreement.

Section 3. Repeal, Savings, Severability.

Any provision of law, regulation, contract, agreement, or policy repealed or modified by a subsequent ordinance will continue in force until the effective date of the repealing ordinance.

The repeal or modification of any part of this ordinance does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this ordinance will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification.

The repeal of any repealing ordinance, clause, or provision does not revive any former ordinance, clause, or provision unless expressly provided by ordinance.

If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction or other entity or agency having jurisdiction to make such determination, the remainder of this Ordinance and the application to other persons or circumstances remain in effect.

Section 4. Effective date; application. This ordinance shall be effective upon adoption. This Ordinance does not affect rights, duties, or liabilities that matured, penalties that were incurred, and proceedings that were begun, before its effective date. The law remains in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture or liability.

Section 5. Recording of ordinance. The City Clerk is directed to obtain all signatures required by the form of Ordinance adopted and maintain an executed original ordinance with the official records of the City of Morgantown, to be maintained, preserved, and accessed in accordance with the laws of the State of West Virginia and the City of Morgantown, and to take the following additional actions: None.

FIRST READING: _____

Mayor

SECOND READING: _____

City Clerk

FILED: _____

City of Morgantown
Morgantown Municipal Airport
and
Shaft Drillers International LLC
Commercial Lease &
Operating Agreement

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**City of Morgantown
Morgantown Municipal Airport
and**

Lease Summary

| | |
|--------------------------------------|--|
| TYPE OF AGREEMENT | Commercial Hangar Ground Lease |
| TENANT | Shaft Drillers International LLC |
| REPRESENTATIVE(S) | John Mayfield |
| NOTICE ADDRESS | 130 Meadow Ridge Road Mt. Morris, PA 15349 |
| EFFECTIVE DATE | 1/1/2025 |
| TERM | 25 Years |
| RENEWAL OPTIONS | One (1) five (5) year option |
| TERMINATION DATE | 12/31/2049 |
| LEASEHOLD/ASSIGNED PREMISES | Lease of 30,050 ft ² land for a 20,000 ft ² hangar |
| INITIAL RENTAL RATE | \$0.37/ft ² for land lease = \$11,118.50 per Annum |
| RENTAL ADJUSTMENT | CPI-W |
| OTHER FEES, RATES AND CHARGES | N/A |
| AUTHORIZED USE(S) | Aircraft storage for corporate aircraft |

NOTE: THIS SUMMARY IS PRESENTED AS A REFERENCE OF THE AGREEMENT INFORMATION AT THE TIME OF EXECUTION. IF THERE IS A DISCREPANCY BETWEEN THE INFORMATION CONTAINED IN THIS SUMMARY AND THE REQUIREMENTS CONTAINED IN THE REMAINDER OF THE AGREEMENT, THE REQUIREMENTS AS STATED IN THE REMAINDER OF THE AGREEMENT WILL PREVAIL.

City of Morgantown
Morgantown Municipal Airport
and
Shaft Drillers International LLC
Commercial Lease and Operating Agreement

THIS COMMERCIAL OPERATING AGREEMENT AND LEASE FOR HANGAR SITE(S) (the “Agreement”), is entered into this 1st day of January, **2025**, by and between the **CITY OF MORGANTOWN**, c/o Morgantown Municipal Airport, Morgantown, West Virginia (the “City”), and **Shaft Drillers International LLC, a Pennsylvania limited liability company duly authorized to operate in the State of West Virginia** (the “Operator”) or its assignee(s).

WITNESSETH:

In consideration of the lease of certain real property and the covenants and agreements contained herein, the parties agree as follows:

ARTICLE 1
PREMISES

The City hereby leases to Operator, for its exclusive use as specifically authorized herein, and for no other use except as agreed to, and authorized herein, a tract(s) of land located at **Morgantown Municipal Airport** (the “Airport”), as shown on **Exhibit A & B**, attached hereto and incorporated herein by reference (the “Premises”).

Section 1.01 Demised Premises

The Premises consists of approximately 30,000 total square feet of vacant land on which Operator shall construct a hangar containing approximately 20,000 square feet of usable space (the “Hangar”) and the remaining 10,000 square feet of which shall be used as an apron area for the Hangar, all as more fully reflected on Exhibits A & B attached hereto and incorporated herein by this reference.

Section 1.02 Acceptance of Demised Premises

Tenant accepts the Premises “AS IS” in its present condition. Operator has had the right to inspect the same for suitability for the purposes it intends. Operator acknowledges that neither the City nor its agents have made any representation or warranty as to the condition and/or suitability of the premises.

Section 1.03 Use of Demised Premises

1. The Operator’s use of the demised premises is limited to the maintenance, repair and storage of Operator’s own corporate aircraft and that of its subtenant. Any future expansion or change in use of the demised premises will require the prior written approval of the City.
2. The Operator, in addition to the use of the demised premises, shall be entitled to the general use, in common with others, of all non-aviation airport facilities made available for use to other aircraft operators, as well as the general public except as otherwise hereinafter provided.
3. For the purpose of this Agreement, “airport facilities” available to the Operator and its employees shall include automobile parking areas, roadways, sidewalks, or other areas of the Airport, that have been constructed at City expense for the benefit of Airport tenants and the general public, as well as the Air Operations Areas of the Airport, subject to Operator’s compliance with all applicable rules and regulations, and directives of the Airport Director.
4. The use of the above-mentioned airport facilities by Operator shall be subject to their full compliance with such rules and regulations as now exist or may hereafter be enacted by the City. Approved uses of airport facilities are also subject to the payment of such fees and charges, as may be non-discriminatorily established from time to time by the City for the maintenance, operation or replacement of these facilities.

Section 1.04 Prohibited Uses

The following activities are expressly prohibited.

1. The Operator may not use any part of the demised premises for any activity or purpose, other than as expressly set forth and authorized in Section 1.03, unless such use is approved, in writing, by the City.
2. Operator is prohibited from using or permitting the demised premises to be used for the sale to its employees, or to the public, of any goods or services not directly related to those activities authorized in this Agreement.

ARTICLE 2
OBJECTIVES AND PURPOSE OF LEASE

Section 2.01 Use of Premises.**A. Commercial Activity – Operating Authority.**

1. The Operator's commercial use of the Premises, including building[s] and facilities constructed thereon, as described in Section 1.03 shall be conducted in accordance with the Rules & Regulations and Minimum Standards for the Morgantown Municipal Airport (the "**Rules and Regulations**") and "**Minimum Standards**", currently in force, and as they may be amended, revised, superseded, or replaced.
2. The use of hangars, on Airport property, is primarily for the storage of aircraft and associated equipment, maintenance of aircraft, offices, parts rooms, restrooms and passenger waiting rooms, in support of aircraft / aviation operations. The storage of non-aviation items or materials may not occupy more than approximately 10% of the hangar.
3. The Operator, in addition to the use of the Premises, shall be entitled to the general use, in common with others, of all Airport facilities made available for use to the general public except as otherwise hereinafter provided.
4. For the purpose of this Agreement, "Airport facilities" shall include runways, taxiways, ramps, aircraft and automobile parking areas, roadways, sidewalks, navigation and navigational aids, lighting facilities, terminal facilities, aircraft fueling facilities or other areas of the Airport, that have been constructed at City's expense for the benefit of the Operator, Operator's tenants, and the general public. **Provided, however,** that the use of the above-mentioned airport facilities, by the Operator, and Operator's subtenant(s), shall be subject to their full compliance with such rules and regulations as now exist, or may hereafter be enacted by the City. Operator understands and agrees that approved uses of Airport facilities are also subject to the payment of such fees and charges, including, but not limited to, landing fees, fuel flowage fees, airfield access charges, commissions on gross receipts, or ground site rents, as may be established from time to time by the City for the maintenance, operation or replacement of these Airport, and Airport related facilities. The City will provide the Operator with notice and an opportunity to comment prior to implementation of any such new fees, charges, or commissions on gross revenues, pursuant to Section 3.07 hereof.

B. Termination or Modification of Commercial Activity Operating Authorization.

1. Subject to 30 days' notice and an opportunity to cure, the City reserves the right to immediately terminate a commercial activity operating authority, reduce the Operator's operating authority, or declare Operator to be in default of this Agreement, if the Operator discontinues one or more of the required services, or the quality and/or quantity of required services which, in the City's sole opinion, deteriorates to a level at which the Operator fails to meet the service needs of the public. Upon notification under this section, the Operator shall show cause as to its ability to perform the requisite

service. For avoidance of doubt, the parties acknowledge and agree that, as of the commencement of this Lease, the Operator is not providing nor does it intend to provide any such commercial services or activities to or for the public.

2. Termination or suspension of authority to conduct one or more of Operator's commercial activities shall not act as a suspension of Operator's obligation to pay ground rent, commissions, or fees or constructive eviction by the City and, unless a default of this Agreement is specifically declared as provided above, Operator's obligation to pay rent and all fees hereunder shall continue.

Section 2.02 Prohibited Uses.

The following activities are expressly prohibited:

1. The Operator may not use any part of the Premises or the improvements located thereon for any aviation or non-aviation activity or purpose, other than as expressly set forth and authorized in Section 2.01, unless such use is approved, in writing, by the City.
2. The Operator will not block the taxiways, runways or aircraft ramps or store aircraft upon taxiways or grass areas of the Airport.
3. The operation of automobiles, trucks, or other vehicles in the air operations areas of the Airport is prohibited.
4. The fueling of aircraft, except through the Airport's approved aircraft fueling facility, is also prohibited.
5. Any activity not specifically authorized by this Agreement is prohibited.

Section 2.03 Conduct of Operations on Premises.

In its exercise and carrying out of the rights, privileges, duties, and obligations granted herein, and in its use of the Premises, Operator hereby obligates itself, and agrees to obligate all of its sub-tenants and/or occupants, to the following requirements and regulations:

1. Operator shall not consent to any unlawful use of the Premises, nor permit any such unlawful use thereof.
2. Operator agrees that all local, federal and state ordinances and laws will be observed in its use and occupancy of the Premises, including the rules and regulations of the federal and state aeronautical authorities and the local governing authorities.
3. Operator shall comply with all City of Morgantown and/or Airport rules, regulations and ordinances as they now exist or may hereafter be amended or adopted.
4. The Operator, its sub-lessees, employees, invitees and those doing business with them shall conduct all activities in an orderly and proper manner so as not to annoy, disturb or to be offensive to others at the Airport. The City shall have the right to complain to Operator as to the demeanor, conduct and appearance of Operator's employees, sub-lessees, invitees and those doing business with it, and as to its and/or their failure to utilize said facilities at times, and in the manner, and according to the standards, mandated by the City, whereupon Operator will take all steps reasonably necessary to remove the cause of the complaint and bring the operations and services into compliance with such standards.
5. Operator shall comply with all rules and regulations of the Morgantown Fire Marshal and/or State Fire Marshal in the conduct of its operations on the Premises.
6. Operator shall abide by all environmental laws, rules and regulations contained in the Rules and Regulations as are applicable to Operator's activities.

7. Operator shall be responsible for the payment of water, gas and sewer charges and electric current, telephone service and other utilities utilized or consumed on the Premises and shall separately meter same.
8. Operator may have coin-operated telephones in the building[s] on the demises premises and may have any other reasonably appropriate vending machines as Operator deems necessary and appropriate on the Premises without having to secure the written consent of City.
9. Operator shall not use or permit the Premises to be used for the sale to its employees or to the public of any goods or services not directly related to those activities authorized in this Agreement.
10. Operator agrees to return the Premises to the City at the expiration of this Agreement in the same condition as when taken, with the exception of the constructed hangar, reasonable wear and tear excepted unless other arrangements are made with the City. As relates to the Hangar, City shall have the option to take possession of the same or to require Operator to demolish and remove the same at the expiration or termination of this Agreement. If Operator does not so remove the Hangar from the Premises, City may, at its option, take possession of the same or have the Hangar demolished and removed at Operator's cost.

The City reserves the right to further develop its land and to lease the same for any lawful purpose whatsoever or to provide any services it deems necessary or desirable in its sole and absolute discretion, for the public, regardless of the desires or views of Operator, and without interference or hindrance.

ARTICLE 3

TERM, RENT AND ADJUSTMENTS TO RATES AND CHARGES

Section 3.01 Initial Term.

The initial term of this Agreement shall be for a period of Twenty-Five (25) years, effective **JANUARY 1, 2025** (the "**Effective Date**"), and terminating on **DECEMBER 31, 2049**.

Section 3.02 Option to Renew.

At the end of the Initial Term of this Agreement, the Operator shall have the option to enter into a new agreement for the Premises, referred to in Article 1; **PROVIDED**, that Operator is not then in default of this Agreement.

1. Operator shall have the option to renew this lease for one (1) additional five (5) year (60 month) period.
2. The Operator shall be deemed to have exercised its option to renew this lease for the additional five (5) year (60 month) term unless the Operator shall give the City written notice of Operator's intention not to renew the term of this lease one hundred eighty (180) days prior to the expiration of the Initial Term. No such automatic renewal may be exercised, occur or become effective when there exists any Event of Default as defined in Article 9 or otherwise in this Agreement. If an Event of Default would otherwise prevent renewal, the City may authorize the renewal by delivery to Operator of notice of the same in writing at any time prior to the expiration of the Term.
3. *[Intentionally Left Blank – Not Applicable]*
4. Prior to the conclusion of the initial and all renewal terms, the Operator and City may initiate discussions regarding a new lease. The Operator may declare its intention to begin negotiations on a new lease agreement, in writing, on or before, the 180th day prior to the expiration of this Agreement. Such 180 day period shall expire at midnight of the last day of the Agreement.
5. During said 180 day period, all of the terms and conditions including the amount of rent to be paid under a new agreement shall be negotiated in good faith by both parties and reduced to writing and executed, if the parties mutually agree to such terms. If a written lease agreement is not executed by the Operator prior to the end of the option period as stated above, this option shall expire and this Agreement shall terminate in accordance with Article 11.
6. In the event the parties cannot agree, or Operator fails to, or is otherwise unauthorized, to enter into a new lease agreement, ownership of the building and other fixed improvements shall automatically revert to the City upon termination and the Operator shall have no further rights under this Agreement

nor shall it have any interest in the Premises, buildings or improvements, constructed thereon subject to the provisions of Section 2.03(10).

Section 3.03 Ground Rent.

1. Subject to annual increases as set forth in Section 3.05 below, the Operator shall pay an annual ground site rent of \$11,118.50, which is equal to \$0.37 per square foot for 30,050 square feet of improved ground site (see Exhibit B). Said agreed rent shall be paid in advance monthly in twelve (12) equal installments of \$926.54 on the first day of each month. All payments are to be made at the office of the Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505.
2. Security for Payment: In the event of a default as defined in Section 9. Paragraphs 1 & 2, it is hereby agreed to herein that the default will be cured and future rent, fees and commission payments will be made through a surety bond as acquired by the Operator as described in Section 3.09 in this section.

Section 3.04 Commission on Gross Receipts.

1. [Intentionally Left Blank – Not Applicable]
2. Security for Payment: In the event of a default as defined in Section 9. Paragraphs 1 & 2, it is hereby agreed to herein that the default will be cured, and future commission payments will be made through a surety bond as acquired by the Operator as described in Section 3.09 in this section.

Section 3.05 Future Adjustments of Rents and Fees.

Commencing on the first anniversary date of this agreement, and for each one (1) year period thereafter, the annual rental payment shall be adjusted by dividing the initial rental rate by the Mid-Atlantic All Urban Items Consumers Index (CPI-W) published immediately preceding the Effective Date of this Lease, **January 1, 2025**, and multiplying the quotient thereof by the last Index (CPI-W) published immediately preceding each such one (1) year lease period $\left(\left(\frac{\text{initial rental rate}}{\text{initial CPI-W}} \right) \times (\text{current CPI} - W) = \text{new rental rate} \right)$. At no time, however, shall said rental be less than the rental paid during the previous year period of this Agreement.

For purposes of this Agreement, the Consumers Price Index means the Index for "All Items" for Urban Wage Earners and Clerical Workers Commodity Groups for the Mid-Atlantic area as determined by the United States Department of Labor, Bureau of Statistics.

Should the United States Government revise its price index at any time, the parties hereto will follow such suggestions as the Government may issue for making an arithmetical changeover from one Index to another. Should the price index be wholly discontinued, then its successor or the most nearly comparable successor index thereof, adjusted back to the anniversary date, shall be used.

Section 3.06 Holding Over.

If Operator holds possession of the Premises after the expiration or termination of the Term, including any renewal term, by lapse of time or otherwise, the building and all improvements having reverted to the ownership of the City, Operator shall become a tenant at sufferance upon all of the terms contained herein, except as to Lease Term and Rent. During such holdover period, Operator shall pay to the City a monthly rental equivalent to one hundred fifty percent (150%) of the Rent payable by Operator to the City with respect to the last month of the Lease Term. The Operator shall also be obligated to pay rent on the building and improvements (other than the Hangar) at a rate to be established by the City at that time. The monthly rent payable for such holdover period shall in no event be construed as a penalty or as liquidated damages for such retention of possession. Without limiting the foregoing, Operator hereby agrees to indemnify, defend and hold harmless the City, its beneficiary/ies, and their respective agents, contractors, officers, insurers, and employees, from and against any and all claims, liabilities, actions, losses, damages (including without limitation, direct, indirect, incidental and consequential) and expenses (including, without limitation, court costs and reasonable attorneys' fees) asserted against or sustained by any such party and arising from or by reason of such retention of possession, which obligations shall survive the expiration or termination of the Lease Term. Nothing herein shall be construed as requiring City to allow Operator to hold over, and doing so shall not be a waiver of any of City's rights at termination. Notwithstanding any

other provisions hereof, in the event that City allows any holdover tenancy, City may terminate such tenancy at any time by deliver of ten (10) days written notice to Operator.

Section 3.07 Late Charges.

The Operator shall pay to the City a late charge equal to 1.5% per month on all rent and fee charges which are 30 days past due. Said late charge shall commence on the past due amount from the date said payment was due and shall be computed to the date the past due amount is paid. This shall be in addition to, and in no way alters, any other rights reserved to the City, or existing in the City by virtue of the laws of the State of West Virginia, or by the terms of the Agreement.

Section 3.08 Future Adjustments of Rents and Fees.

The City reserves the right to adjust, or modify existing Airport fees, commissions, and charges, or to establish additional fees, commissions, and charges as necessary to maintain the financial integrity of the Airport through cost recovery and to make the Airport as self-sustaining as possible. All fees, rents and charges are subject to adjustment as a part of the City's annual budget approval process. Airport Tenants and the general public are provided the opportunity to comment on proposed fees, rents and charges during the budget approval process.]

Section 3.09 Financial and Credit History.

On or before the commencement date of this agreement, Operator agrees to provide the City with evidence of a good credit history, and information confirming the Operators financial ability to meet the financial obligations of this lease. The Operator should demonstrate that it has the capital improvement funding and the appropriate level of operating capital necessary to initiate the proposed construction and to cover all business operating expenses for at least the initial 12 month start up period of the business. Operator must also demonstrate that it has successfully met its financial obligations during the most recent eighteen (18) month period, without committing any material defaults and without any history of untimely payments for rentals, fees, and charges in its other business dealings.

In the absence of being able to demonstrate a good financial and credit history, the prospective Operator agrees to provided "security for payment" (Contract Security or surety bond) to assure City that Operator's financial obligations will be met. Such Contract Security may be in the form of (1) a personal or corporate guarantee by an individual or corporation having the good credit history mentioned in paragraph 1 above , or (2) a surety bond, letter of credit or other similar security acceptable to City in an amount equal to the estimate of one (1) year of rentals, fees and charges payable by the Operator in order to guarantee the faithful performance of the Operator's obligations to the City under the agreement and the payment of all rentals, fees, and charges. Operator would be required to maintain such contract security in effect for the first two (2) years of the lease, during which period Operator commits no event default as detailed in the agreement. All forms of Contract Security must be in a form and with a surety company reasonably acceptable to City.

Section 3.10 Monthly Gross Revenue Report.

[Intentionally Left Blank – Not Applicable]

Section 3.11 Annual Special Report Audit Required.

[Intentionally Left Blank – Not Applicable]

Section 3.12 Waiver of Annual Audit.

[Intentionally Left Blank – Not Applicable]

ARTICLE 4
OPERATOR'S IMPROVEMENTS AND FUTURE CONSTRUCTION

Section 4.01 Construction of Improvements for Operator's Commercial Activities.

The Operator shall, at its sole cost and expense, construct on the demised premises, as provided in this Article 4, such buildings, structures, fencing, roadways, utility lines, additions, and improvements in

furtherance of the purposes set forth in Article 2, and the Operator shall install herein and thereon such equipment and facilities as the Operator or the City deems necessary or desirable. At a minimum, Operator shall construct a (20,000) square foot hangar, including, as applicable or intended, building foundation; floor slabs; building frame; siding; roof; masonry and drywall partitions; hollow metal and wood doors; aluminum windows and doors; floor, wall and ceiling finishes; cabinet work; HVAC; plumbing, fire protection; lighting; power; parking lots; onsite utilities; and other miscellaneous construction, together with Landscaping, including lawn, shrubbery, trees, bushes, vines and other plantings, and any further landscaping and fencing that may be required for the purposes of airfield security and public screening, and such other facilities necessary to meet the requirements of the Rules and Regulations, but at minimum an enclosed facility of the size described with the capability to store aircraft and an external parking or apron area of the size described in this Agreement and sufficient to service Hangar operations (the “**Operator’s Improvements**”). **PROVIDED, HOWEVER**, that no building, structure, fencing, roadway, utility lines, addition or improvement of any nature shall be made or installed by the Operator without the prior written consent of the City as herein provided. Prior to the City giving such consent, the Operator may also be required to provide the City with proof that funds necessary to complete construction of the improvements have been irrevocably dedicated to such construction. All improvements constructed under this Agreement shall be in accordance with the Airport’s Tenant Improvement Manual/Minimum Standards as well as all other applicable laws, rules, regulations and ordinances.

Section 4.02 Time for Construction of Operator’s Improvements.

Construction of Operator’s Improvements on the site directly associated with effective date of this Agreement shall begin not later than **120 days** from the Effective Date of this Agreement and shall be completed no later than **12 months** from the Effective Date of this Agreement. In the event Operator shall fail to begin construction within the initial 120 day period, City shall have the right to terminate this Agreement through written notice with no further obligations being required of either party. In the event Operator shall fail to complete construction within the 12 month construction period, City shall have the right to terminate this Agreement through written notice, after filing a claim against the performance bond provider in accordance with Section 4.12 in order to fund the completion of the construction. Even if the agreement is terminated for non-performance, Operator shall remain obligated to pay any unpaid rent or other charges. Notwithstanding the foregoing, should Operator be delayed due to Force Majeure, as defined in Section 4.05 below, then the period for commencement and/or completion of construction shall be extended by the number of days of delay resulting from the Force Majeure, as applicable.

Section 4.03 Approvals for Operator’s Improvements and All Future Construction.

The Operator covenants and agrees that prior to the preparation of detailed construction plans, specifications and architectural renderings of any such building, structure, roadway, addition or improvement, it shall first submit plans showing the general site plan, design and character of improvements and their locations, including drainage and roadways to the Airport for approval. The Airport agrees to review such plans within 30 days of receipt from the Operator. The Operator covenants and agrees that prior to the installation or construction of any present and future building, roadway, structure, addition or improvement on the demised premises, it shall first submit to the Airport for approval, final detailed construction plans and specifications and architectural renderings stamped and approved by registered architects and engineers, and that all construction will be in accordance with such plans and specifications and the Airport’s Tenant Improvement Manual/Minimum Standards and all other applicable rules, regulations, laws and ordinances. The Airport’s approval of the documents, does not obligate other City departments to the timeline indicated above.

Section 4.04 Extension of Utilities or Special Facilities.

The Operator shall contract, and extend, at its sole expense, all necessary utility, electrical, water, sewer and other lines needed to service any hangars, buildings and facilities constructed as part of Operator’s Improvements or as part of future construction on the demised premises. The Operator shall construct for the demised premises, at its expense, connecting roadways and taxiways to the existing roadway and taxiway systems. All utility extensions and other construction shall be in accordance with all applicable Codes, ordinances and the Tenant Improvement Manual.

Section 4.05 Construction of Additional or Future Improvements.

The Operator has the right to construct additional buildings or improvements on the demised premises. Prior to such construction, the Operator agrees to submit to the City for approval, final plans, specifications and architectural renderings prepared by registered architects and engineers, and comply with all other requirements of Section 4.03 of this Section 4. The use of additional or future facilities shall also be subject to the terms and conditions hereof.

If any additional building or any improvement, approved by the City, during the remaining term hereof is not substantially completed within 12 months of the date of the City's approval of the Plans therefore, the City shall have the right to terminate this Agreement pursuant to Article 9 hereof, and make appropriate claims against required performance bonds to complete construction, unless it is determined by the City, after notice and opportunity for comment, that there were delays beyond the control of the Operator. Causes or conditions of delay that are beyond the control of the Operator (hereinafter referred to as "Force Majeure"), as, by way of example but not limitation, strikes, weather, inability to obtain labor or materials, governmental restriction, enemy action, civil commotion, fire or other casualty, or failure of the City to carry out its obligations, then the period for completion of construction shall be extended by the number of days of delay resulting from the Force Majeure.

Section 4.06 Alterations or Repairs to Premises.

The Operator shall not construct, install, remove and/or modify external or structural portions of the buildings constructed upon the demised premises without the prior written approval of the City. The Operator shall submit for approval by the City, its plans and specifications for any proposed project as well as complying with all applicable code requirements and such other conditions considered by the City to be necessary. The Operator can make internal improvements to the demised premises without the City's consent as long as said changes meet all applicable Code requirements.

Section 4.07 Lien Indemnification.

Operator shall not allow any portion of the City's and/or Airport's property to become subject to any lien, including any contractor's, mechanic's, or materialman's lien, and Operator shall include in its Agreements with any contractor furnishing services at the Premises adequate notice to the contractor(s) that the Premises constitute public property not subject to such liens under applicable law. In the event any person or corporation shall, as a result of construction work being performed by or for the Operator, attempt to assess a lien against the demised premises, the Operator shall defend, indemnify, and hold the City harmless from such claim, including the cost of defense.

Section 4.08 Cost of Construction and Alterations.

Within thirty (30) days of completion of the construction or alterations, the Operator shall present to the City for examination and approval a sworn statement of the construction and/or alteration costs. Construction and/or alteration costs for the purpose of this Section are hereby defined as all money paid by the Operator for actual site preparation, construction or alteration, including architectural and engineering costs plus pertinent fees in connection therewith. In the event that the Operator makes further improvements or alterations on the demised premises, the use thereof shall be enjoyed by the Operator during the term hereof without the additional rental therefor.

Section 4.09 As-built Drawings.

Within ninety (90) days following completion of any construction by the Operator and any subsequent additions, alterations or improvements, the Operator shall present to the City a complete set of "as-built" drawings including, but not limited to, architectural renderings, specifications, plumbing, and electrical plans.

Section 4.10 Security Interest on Leasehold Improvements for Construction.

Operator shall have the right to place a security interest, hereinafter referred to as "the mortgage," upon, and for, Operator's rights in and to the improvements financed by the Operator on the Premises only and which shall not encumber or be a lien upon the land. The mortgage shall be subject to the terms of this Agreement. All of the Operator rights and obligations under this Agreement shall inure to the benefit of such mortgagee named in said mortgage ("the Lender") and its assignees. The rights granted in this Section 4.10 are contingent upon Operator providing the City with copies of the signed loan documents and

security agreements, and the name, address and mailing address of the lender for purposes of providing any notices thereto.

The lender named in such a mortgage shall have the following rights and shall be subject to the following duties:

1. The term of the mortgage may not exceed the original twenty-five (25) year term of this Agreement.
2. In the case of a default by the Operator under the terms of the mortgage against Operator's building, the Lender shall have the right to assume the rights, benefits, duties and obligations granted and imposed upon the Operator under the terms of this Agreement, including the obligation to pay all delinquencies in rent or other obligations of the Operator. Such Lender shall have the right to assign its interest in this Agreement to a third party with the City's approval which will not be unreasonably withheld, **PROVIDED** that such assignee meets all of the requirements of this Agreement and possesses the financial and managerial experience to perform the commercial activities specified in this Agreement.
3. Any Lender acquiring ownership and possession of the building(s) located upon the Premises shall have a reasonable period of time, not to exceed 30 days, to provide or arrange for providing all the services that are required to be provided by the Operator under the terms of this Agreement, or a tenant that is otherwise satisfactory to the City.
4. All notices required by Section 14.14 hereof to be given by City to Operator shall also be given to Lender at the same time and in the same manner. Upon receipt of such notice, Lender shall have the same rights as Operator to correct any default.
5. Within ten (10) days after Operator's request, City shall deliver an Estoppel Certificate, a declaration to any person designated by Operator:
 - a. ratifying this Agreement;
 - b. Stating the commencement and termination dated and the rent commencement date; and
 - c. certifying
 - i. that this Agreement is in full force and effect has not been, to the knowledge of the City, assigned, modified, supplemented or amended (except by such writings as shall be stated);
 - ii. that all conditions under this Agreement to be performed by Operator have been satisfied (stating exceptions, if any);
 - iii. no defenses or offsets against the enforcement of this Agreement by Operator exist (or stating those claimed); and
 - iv. the date to which rent has been paid, and such other information as Operator reasonably requires.

Section 4.11 Ownership of Improvements.

A. Ownership.

1. For the initial term and any extension or renewal term, the building constructed and paid for by the Operator belongs to the Operator and may be encumbered by a security interest for construction funding only as provided for in Section 4.10 hereof. No other lien or encumbrance shall be permitted except as provided for in Section 4.10 hereof other than by lien of the City on account of default by the

Operator in payment of sums required to be paid to the City under the terms of this agreement or by law.

2. During the initial term of this Agreement or any renewal term, the Operator is obligated to pay ground rent only and is not obligated to pay rent on the buildings and improvements erected and installed by Operator. If, upon expiration of the initial term or any renewal term, Operator's occupancy is extended by mutual agreement of the parties, it is intended that Operator (*who constructed the original improvements*) will continue to pay only ground rent. However, Operator shall no longer have the right to sell, assign, mortgage or encumber the Premises or the buildings and improvements erected thereon. At the cessation of Operator's possession and occupancy at the conclusion of the term or any extension or renewal, the Premises together with all of the buildings and improvements shall automatically revert to and become the property of the City. Any further lease of the Premises by the City to any other party shall be based upon the fair market rental value of the all land and buildings on the Premises according to the City's then applicable leasing policies.

B. Sale of Building.

1. In the event Operator, its successors and/or assigns, including any lender succeeding to the right of Operator by virtue of foreclosure or repossession proceeding, desires to sell the building(s) owned by the Operator, during the term of this Agreement, including renewal terms, it shall give written notice to the City offering to sell the building(s) to the City for the price and on the terms stated in said written offer. City shall have 30 days from the date of receipt of said written offer to accept the same. If the City accepts said offer, closing shall occur no later than 30 days from the date of acceptance. In the event the City does not accept the offer, the Operator shall then be free to enter into an agreement for sale of the building(s) to any other party meeting the qualification standards of this Agreement for providing required services and who satisfies all of the terms and conditions of this Agreement or is otherwise acceptable to the City subject, however, to a right of first refusal granted to the City as hereinafter described.
2. The Operator, its successors and/or assigns, including any lender acquiring the building(s) by foreclosure or repossession, shall give written notice to the City of a bona fide good faith offer received from a third party which the Operator intends to accept, which written notice shall state the price and terms of sale. The City shall thereafter have a period of 30 days from the date of receipt of said notice in which to give notice to the Operator of the City's intention to purchase Operator's building(s) for the same purchase price and on the same terms as contained in the bona fide good faith offer from the third party. Should the City fail to give such written notice within said 30 days, or should it earlier in writing indicate its intention not to purchase Operator's building, then Operator may thereafter convey the property to the third party on the same terms and conditions as rejected by the City. In the event, however, that the offer by said third party as conveyed to the City does not result in a completed sale, the Operator shall continue to have the obligation to notify the City as provided herein of any subsequent bona fide good faith third party offer.

C. Assignment/New Ground Lease.

1. In the event of a sale of the building to a third party, this Agreement may be assigned to the purchaser of the building(s) as long as the assignee agrees to use the Premises, and meet the operating standards described herein, if and as applicable, and in the Airport's Rules and Regulations and Minimum Standards. The proposed assignee must agree to be bound by all of the terms and conditions herein, PROVIDED that the assignee is acceptable and meets all the commercial operating requirements noted in Section 2 above.
2. The City reserves the right to require assignee, as a condition to City's consent to assignment, to enter into a new commercial operating agreement and lease at the end of the initial term of this Agreement if City determines in its sole discretion that the then legal and operational requirements of the Airport, including Rules and Regulations and Minimum Standards, require changes relating to such items as the commercial operating authority, additional or changes to the uses of leased property, changes in term or conditions of the land lease, or changes in Airport rates and charges; provided that, any

assignee must comply at all times with all rules and regulations imposed by or pursuant to authority of the Federal Aviation Administration.

Section 4.12 Performance Bonds.

Prior to commencement of any construction hereunder, Operator shall furnish a performance bond and a labor and material payment bond (“bonds”) to be kept in force throughout the period of construction and for ninety (90) days thereafter, in amount(s) deemed sufficient by City to cover the full cost of performance of construction. The bonds shall be in the amount of the construction cost covering faithful performance of the Operator’s obligations hereunder and the payment of all obligations arising in connection with the construction, free of liens upon the Premises. The bonds shall name the City as obligee, and shall be written by surety companies qualified to do business in the state of West Virginia, under proper certificate of authority, and in such form and with such sureties as the City may reasonably approve.

ARTICLE 5
OBLIGATIONS OF OPERATOR

Section 5.01 Net Lease.

It is the intention of the parties that this Agreement is what is commonly known as a “net-net-net” lease or “carefree” lease, and the City’s obligations are limited to those it has expressly undertaken in this Agreement. Accordingly, Operator shall pay all expenses relating to the Premises during the Term of this Agreement as and when the same become due and payable, including, but not limited to, all taxes and assessments, insurance premiums, maintenance expenses, expenses of public utilities and any other expense of any type or nature so that the Agreement is absolutely net to the City. It shall be the sole responsibility of the Operator to maintain, repair and operate the entirety of the Premises, and the improvements and facilities constructed thereon, at the Operator’s sole cost and expense.

Section 5.02 Maintenance and Operation.

The Operator shall maintain the Premises at all times in a safe, neat and clean condition, and shall not permit the accumulation of any trash, paper, or debris on the Airport premises. The Operator shall repair all damage to the Premises caused by its employees, patrons, or its operation thereon; shall maintain and repair all equipment thereon, including any buildings and improvements; and shall repaint the buildings as necessary.

1. Upon occupancy, the Operator shall be responsible for and perform all maintenance, including but not limited to:
 - a. Janitorial services, providing janitorial supplies, window washing, rubbish, and trash removal.
 - b. Supply and replacement of light bulbs in and on all buildings, obstruction lights and replacement of all glass in building, including plate glass.
 - c. Cleaning of stoppages in plumbing fixtures, drain lines and septic system to the first manhole outside the Premises.
 - d. Replacement of floor coverings.
 - e. Maintenance of all building and overhead doors and door operating systems including weather stripping and glass replacement.
 - f. Building interior and exterior maintenance, including painting, repairing and replacement.
 - g. Repair or replacement of equipment and utilities to include electrical, mechanical and plumbing in all buildings, including but not limited to air conditioning and heating equipment. All repairs may be made without the City’s consent as long as said changes meet all applicable code requirements.
 - h. The Operator shall be responsible for all snow removal on the Premises and auto parking areas if any in its use. The Operator shall do so in a manner which does not interfere with airport operations or damage property.
 - i. The Operator shall perform all maintenance on Premises or Operator-constructed structures, pavements and equipment and utilities to the point where connected to the main source of supply or the first manhole outside of the Premises or to the utility corridor.
 - j. The Operator shall advise the City and obtain Operator’s consent in writing before making changes involving structural changes to buildings or premises, modifications or additions to plumbing, electrical or other utilities. Any penetration of the roof shall be considered a structural change.

- k. The Operator is responsible for maintaining electric loads within the designed capacity of the system. Prior to any change desired by the Operator in the electrical loading which would exceed such capacity, written consent shall be obtained from the Airport Director of the City.
- l. The Operator shall maintain and replace all lights in and on the building and on the Premises.
- m. The Operator shall provide and maintain hand fire extinguishers for the interior of all buildings, shop, parking, storage and ramp areas in accordance with applicable safety codes.
- n. The Operator shall maintain all landscaping and grounds as originally approved and installed, to include, but not limited to, the mowing of grass, trimming of bushes, and watering of trees.
- o. The City's Airport Director, at his discretion, shall be the sole judge of the quality of maintenance; and the Operator, upon written notice by the City to the Operator, shall be required to perform whatever maintenance the City deems necessary. If said maintenance is not undertaken by the Operator within thirty (30) days after receipt of written notice, the City shall have the right to enter upon the Premises and the buildings and improvements constructed thereon, and perform the necessary maintenance, the cost of which shall be borne by the Operator as additional rent which shall be paid by the Operator to the City in full within ten (10) days after the same has been billed.

Section 5.03 Utilities.

The Operator shall assume and pay for all costs or charges for utilities services furnished to and used by the Operator during the term hereof and Operator shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense for any future improvements; and the Operator shall pay for any and all service charges incurred therefore.

Section 5.04 Trash, Garbage, Etc.

The Operator shall pick up, and provide for, a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, hazardous materials and other refuse caused as a result of its operations. The Operator shall provide and use suitable covered metal receptacles (dumpsters) for all such garbage, trash, and other refuse. Receptacles shall not be located on the aviation side of the Operator's facilities. Piling of boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Premises, shall not be permitted.

Section 5.05 Signs.

The Operator shall not erect, maintain, or display upon the outside of any improvements on the Premises any billboards or advertising signs without prior written approval by the Airport Director.

Section 5.06 Nondiscrimination.

1. The Operator, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (A) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (B) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof no persons the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (C) that the Operator shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and Transportation, and said Regulations may be amended, to the extent that said requirements are applicable, as a matter of law, to the Operator. Operator will additionally comply with all requirements of Article 153 of the City Code, entitled Human Rights, and will not discriminate on the basis of actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, disability, familial status or veteran status, and shall include such requirements in all agreements with any subtenant(s), contractor(s), or other entrants or occupants.
2. With respect to the Premises, the Operator agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; **PROVIDED**, that the Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

3. Operator agrees for itself and its subcontractors not to discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight or marital status or because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of this covenant shall be regarded as a material breach of this agreement.
4. Operator assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E ("Subpart E"), to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in Subpart E. Operator assures that no person shall be excluded on these grounds from participating or receiving the services or benefits of any programs or activity covered by Subpart E. Further, Operator agrees that it will require that its covered sub-organizations provide assurance to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by Subpart E, as to the same effect.
5. If Operator is covered by 49 CFR Part 23, then Operator agrees that this Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F. Operator agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

Operator agrees that it shall insert the above covenants and assurances in any agreement by which Operator grants a right or privilege to any person, firm or corporation to render accommodations or service to the public on the Premises leased or occupied by Operator.

In the event of breach of any of the above covenants, the City shall have the right to terminate the Agreement and to reenter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. It is further understood and agreed that the City shall have the right to take such action as the Federal Government may lawfully direct to enforce this obligation. In the event further covenants and/or assurances are required of the City by the Department of Transportation or FAA which are applicable to this Agreement, Operator agrees that it will conform with the provisions thereof so long as this Agreement is in effect.

During the performance of this Lease, the Tenant, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but limited to:

- (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (ii) 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (iv) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- (v) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (vi) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

(vii) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

(viii) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

(ix) The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

(x) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

(xi) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

(xii) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

Section 5.07 Observance of Statutes and Regulations.

The granting of this Agreement and its acceptance by the Operator is conditioned upon the right to use the Airport facilities in common with others authorized to do so, **PROVIDED, HOWEVER**, that the Operator shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations and standards applicable to the Operator for its use of the Premises, including but not limited to, rules and regulations or standards promulgated from time to time by the City for the administration of the Airport.

Section 5.08 Hazard Lights.

The Operator shall, at its expense, provide and maintain hazard lights on any future structure erected by the Operator on the Premises, if required by the City and Federal Aviation Administration regulations. Any hazard lights so required shall comply with the specifications and standards established for such installations by the FAA.

Section 5.09 Airport Security.

The Operator recognizes the City's required compliance with Federal Aviation Regulations concerning airport security and agrees to comply with the Airport's Security Plan as it relates to its use of the Premises and the Airport's public facilities.

It shall be a condition of this Lease that Landlord reserves unto itself, its successors in interest, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Operator expressly agrees for itself, its successors in interest, and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Federal Aviation Regulations, Part 77 (14 C.F.R. § 77).

The Operator expressly agrees for itself, its successors in interest, and assigns, to prevent any use of the Premises that would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

ARTICLE 6 OBLIGATIONS OF THE CITY

Section 6.01 Operation as a Public Airport.

The City covenants and agrees that at all times it will operate and maintain the Airport facilities, as a public airport consistent with, and pursuant to, the "Sponsor's Assurances" given by the City to the United States Government under Federal Airport Act.

Section 6.02 Ingress and Egress.

1. Upon paying the rental prescribed herein, and performing the covenants of this Agreement, the Operator shall have the right of ingress to, and egress from, the Premises for the Operator, its officers, employees, agents, servants, customers, vendors, suppliers, patrons, and invites over the roadway serving the area of the Premises. Airport roadways shall be used jointly with other tenants of the Airport, and the Operator shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City deems necessary.
2. The City reserves the right to periodically assess the joint users of any such facilities for the maintenance, upkeep or replacement of such facilities on an allocation basis as may be reasonably established by the City in the future after notice and opportunity to comment by all users; **PROVIDED**, the City may not discriminate among the same class of users.

ARTICLE 7 CITY'S RESERVATIONS

Section 7.01 Improvement, Relocation or Removal of Structure.

The City, in its sole discretion, reserves the right to further develop or improve the aircraft operating area(s) and other portions of the Airport, including the right to remove or relocate any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the serial approaches of the Airport against obstructions, together with the right to prevent the Operator from erecting, or permitting to be erected, any buildings or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event the City requires the Premises for expansion, improvements, development of the airport, the City reserves the right, on a twelve (12) month notice, to relocate or replace the Operator's improvements, in substantially similar form at another generally comparable location on the Airport. This Agreement shall be amended to include any such new ground site. All other Agreement terms shall remain in full force and effect. In the event of such relocation or replacement, the City agrees to suspend rental during any period such improvements are unusable.

The City also reserves the right to relocate the Operator to a non-aviation ground site in the event the Operator's operations no longer require access to the Airport's ramps, taxiways, runways or other aviation facilities.

Section 7.02 Inspection of Premises.

The City, through its duly authorized agent, shall have at any reasonable time with prior notice, the full and unrestricted right to enter the Premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with Rules and Regulations and the terms of this Agreement.

Section 7.03 Audit Books and Records of Operator.

The City reserves the right, upon reasonable advance notice, to audit Operator's books and records for compliance with this Agreement, Airport Rules and Regulations and the payment of any Airport rates and charges payable to City now or imposed in the future. Operator shall maintain adequate accounting records

in accordance with generally accepted accounting principles, generally accepted auditing standards, the requirements of this Agreement, and the requirements of the City's Rates and Charges Schedule, Ordinance or resolution. Operator agrees to cooperate with the City upon request and agrees to allow access to Operator's books and records at its offices, the offices of Operator's accountant or at the City's offices during normal business hours. The operator shall not be required to maintain such books of account and records for more than three years after the end of each 12 months of this Agreement.

ARTICLE 8 INDEMNITY AND INSURANCE

Section 8.01 Indemnification.

1. The Operator agrees to indemnify, save, hold harmless and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of the Operator, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about Premises or upon Premises; or in connection with its use and occupancy of Premises or use of Airport; **PROVIDED, HOWEVER,** that the Operator shall not be liable for any injury, damage, or loss occasioned by the negligence or willful misconduct of the City, its agents or employees. When knowledge of any action becomes known by the Operator or the City, they shall give prompt written notice to the other party.
2. The Operator shall indemnify, save, hold harmless, and defend the City, its agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances or regulations by the Operator's agents, employees, licensees, successors and assigns, or those under its control. The Operator shall not be liable for any claims, actions and expenses incidental to the investigation and defense thereof, in any way arising from or based upon violation of any federal, state, or municipal laws, statutes, ordinances, or regulations by the City, its agents, employees, licensees, successors and assigns, or those under its control.

Section 8.02 Insurance.

1. Without limiting the Operator's obligation to indemnify the City, the Operator shall provide, pay for, and maintain in force at all times during the term of this Agreement a policy of comprehensive general liability insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than \$2,000,000.00 per occurrence; a policy of comprehensive automobile liability insurance on Operator's owned vehicles only in a combined single limit of not less than \$1,000,000.00; statutory Workman's Compensation insurance; and any other policies of insurance reasonably required by the City.
2. The aforesaid insurance amounts and types of insurance shall be reviewed from time to time by the City and may be adjusted by the City if the City reasonably determines such adjustments are necessary to protect the City's interests. The Operator shall furnish the City, as evidence that such insurance is in force, a certified copy of the insurance Certificate including the City as an additional named insured within thirty (30) days after the policy(s) is issued. Said policies shall be in a form and content satisfactory to the City and shall provide for thirty (30) days written notice to the City prior to the cancellation of or any material change in such policies.

Section 8.03 Environmental Impairment.

1. The Operator will comply with any environmental regulations affecting its operations throughout the term of this Agreement, including furnishing of insurance or other security against environmental impairment risks as required by the City.
2. Operator shall defend, indemnify, protect, and hold the City harmless from and after the date of this Agreement from and against any and all claims, costs, fines, judgments, and liabilities, including attorney fees and costs arising out of or in connection with the presence, storage, use, or disposal of Hazardous Materials or contaminants in, on, under, or about the Premises caused by the acts, omissions, or negligence of Operator or Operator's agents, employees, business invitees, contractors,

or subcontractors. The City represents that as of the date of this Agreement, the City has no knowledge and is not aware of any Hazardous Materials or contaminants in, under or about the Premises. Operator's obligations under this paragraph shall survive the expiration or earlier termination of the term of the lease. For purposes of this Agreement, Hazardous Materials means any flammables, explosives, radioactive materials, petroleum or petroleum byproducts, minerals, metals, chemical substances, asbestos or asbestos-containing materials, hazardous or toxic substances, or any other materials or wastes as are presently defined in or regulated under the environmental laws and the Rules and Regulations.

Section 8.04 Fire and Extended Coverage Insurance.

The Operator shall, at its expense, procure and keep in force at all times during the term of this Agreement with a company suitable to the City, broad form insurance on the building(s) and other improvements on the Premises against loss and damage by fire, aircraft and extended coverage perils. The Operator shall furnish evidence of insurance in an amount not less than the full replacement value of the improvements. The term "full replacement value" shall mean the actual replacement cost from time to time, less exclusions provided in the normal fire insurance policy. Insurance shall name the City as an additional named insured with respect to any improvement on the Premises owned by the City and shall provide that the City receive thirty (30) days' notice of expiration or cancellation.

Section 8.05 Waiver of Subrogation.

Operator, for itself and its respective successors and assigns (including, without limitation, any person, firm or corporation which may become subrogated to any of its rights) waives any and all rights and claims for recovery against City, and its officers, employees, agents and assigns, or any of them, on account of any loss or damage to any of its property located on the Premises insured under any valid and collectible insurance policies, to the extent of any recovery collectible under such insurance policies. Each insurance policy carried by Operator and insuring all or any part of such property must provide that the insurance company waive all right of recovery by way of subrogation against the City.

Section 8.06 Application of Insurance Proceeds.

If the fixed improvements placed upon the Premises shall be partially or totally destroyed or damaged, the Operator and the City, within thirty (30) days of the damage shall decide whether or not to proceed with restoration. If the City and the Operator elect not to restore the same to their previous condition, the proceeds of insurance payable by reason of such loss remaining after payment in full of the mortgage or bond debt and costs to return the site to its original condition, shall be apportioned between the City and the Operator, with the City receiving the same proportion of such proceeds as the value of any destroyed or damaged improvements owned by the City on the Premises bears to the value of all destroyed or damaged improvements on the Premises, if any, and the Operator receiving the balance. The Agreement shall then be canceled. If the damage results from an insurable cause and if the City elects to have the Operator restore Premises with reasonable promptness, or the City and Operator decide to construct the new building(s) on another site, the Operator shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to said restoration, including applicable site clean-up, in which event this Agreement shall be appropriately amended as necessary and continue in full force and effect.

Section 8.07 Performance Bonds.

The Operator shall cause a surety bond to be issued in the amount of 100% of the building and site development construction costs, prior to the beginning of any construction financed by the Operator or for the restoration of Premises in accordance with Section 8.05 above.

Section 8.08 Destruction of Premises (Uninsured Cause).

In the event of damage to or destruction or loss of the building or buildings by an uninsured cause, Operator shall decide, within thirty (30) days of the event, whether it will repair, restore, rebuild, or raise said building or buildings. Within sixty (60) days of the event, Operator shall initiate restoration or raising activities and complete those activities within one hundred twenty (120) days of the event unless otherwise agreed by the City. In the event Operator fails to take action as noted above, this Agreement may be terminated and City shall have the right to raise the building(s) and return the site to its original condition. Operator shall be liable for reimbursing the City for all costs incurred in restoring the site to its original condition.

ARTICLE 9
CANCELLATION BY THE CITY

Section 9.01 Events of Default by Operator.

Each of the following events shall constitute an "Event of Default by Operator":

1. Operator fails to pay rentals, fees and charges when due, and such default continues for a period of ten (10) days after receipt of written notice from the City that such non-payment constitutes an event of default.
2. Operator fails after receipt of written notice from the City to keep, perform or observe any term, covenant or condition of this Agreement, other than as set forth in paragraph 1 (above) and such failure continues for thirty (30) days after such receipt, or if by its nature such event of default by Operators cannot be cured within such thirty (30) day period, Operator fails to commence to cure or remove such event of default by the Operator within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.
3. Operator abandons the premises. Operator's intent not to re-occupy the premises may be presumed upon expiration of ten (10) days after receipt of written notice from the City that it believes in good faith that Operator has abandoned the premises.
4. Operator shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under and other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidation of all or substantially all of its property.
5. An Order for Relief shall be entered at the request of Operator or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
6. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Operator and shall not be dismissed within thirty (30) days after the filing thereof. Operator shall pay to the City all reasonable costs and fees, including attorney and accounting fees and expenses, incurred by the City in the exercise of any remedy in the event of any default by the Operator.
7. By or pursuant to, or under, any legislative act, resolution or rule, or any order of decree of any court or governmental board or agency, an officer, receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of Operator and such possession or control shall continue in effect for a period of fifteen (15) days.
8. Operator shall become a corporation in dissolution, or voluntarily or involuntarily forfeit their corporate charter, other than through merger with a successor corporation.
9. The rights of the Operator hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Subsections 4 through 8 above.
10. Operator defaults with respect to its commercial activity operating authorization under Section 2.01.

Section 9.02 Remedies for Operator's Default.

1. Upon the occurrence of an "Event of Default by the Operator," Operator shall remain liable to the City for all arrearages of rentals, fees or charges payable hereunder and for all preceding breach(es) of any covenant herein contained. The City, in addition to the right of termination, and to any other rights or remedies it may have at law or in equity, shall have the right of re-entry and may remove all

Operator's persons and property from the Premises. Upon any such removal, Operator's property may be stored in a public warehouse or elsewhere at the cost of, and for the account of, the Operator. Should the City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may, at any time subsequent to an "Event of Default by the Operator," either terminate this Agreement or re-let the Premises and any improvements thereon, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Agreement) at such rentals, fees and charges, and upon such other terms and conditions, as the City, in its sole discretion, may deem advisable, with the right to make alterations repairs or improvements on said Premises. No re-entry or re-letting of the Premises by the City shall be construed as an election of the City's part to terminate this Agreement, unless a written notice of such intention is given to the Operator. In re-letting the Premises, the City shall make a good faith effort to obtain terms and conditions no less favorable to itself than those contained herein and otherwise seek to mitigate any damage it may suffer as a result of the "Event of Default by the Operator."

2. Unless the City elects to terminate this Agreement, the Operator shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until termination of this Agreement at the expiration date set forth herein.
3. In the event that the City re-lets the Premises, rentals, fees and charges received by the City from such re-letting shall be applied: first, to the payment of any indebtedness other than rentals, fees and charges due hereunder from the Operator to the City; second, to the payment of any cost of such re-letting; third, to the payment of rentals, fees and charges due and unpaid hereunder; and, the residue, if any, shall be held by the City and applied in payment of future rentals, fees and charges as the same may become due and payable hereunder. Should that portion of such rentals, fees and charges received from such re-letting applied to the payment of rentals, fees and charges due hereunder be less than the rentals, fees and charges payable during the applicable period, Operator shall pay such deficiency to the City. The Operator shall also pay to the City, as soon as ascertained, any costs and expenses incurred by such re-letting not covered by the rentals, fees and charges received from such re-letting.
4. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between the City and Operator with respect to any obligation or alleged obligation of the Operator to make payment(s) to the City, the payment(s) under protest by the Operator of the amount claimed by the Operator to be due shall not waive any of the Operators' rights, and if any court or other body having jurisdiction determines all, or any part, of the protested payment was not due, then the City shall as promptly as reasonably practicable reimburse the operator any amount determined as not due plus interest on such amount at the highest rate allowable under West Virginia law.
5. Upon final judgment or award by a court of competent jurisdiction in City's favor, Operator shall pay to the City, and City shall be entitled to recover as part of such judgment or award, all reasonable costs, fees (including attorneys & accountants) and expenses incurred by the City in the exercise of any remedy upon an event of default by the Operator.
6. Any remedy provided by law.
7. All remedies available to the City are cumulative and no one remedy will be exclusive of another remedy conferred by law or this Agreement.

ARTICLE 10 **CANCELLATION BY OPERATOR FOR EVENTS OF DEFAULT BY CITY**

Section 10.01 Event of Default by City.

Each of the following events shall constitute an "Event of Default by City":

1. The City fails, after receipt of written notice from Operator, to keep, perform or observe any term, covenant or condition herein contained to be kept, performed or observed by the City and such failure

continues for thirty (30) days; or, if, by its nature, such "Event of Default by City" cannot be cured within such thirty (30) day period, the City fails to commence to cure or remove such "Event of Default by City" within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

2. The City closes the Airport to flights in general or to the flights of the Operator, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen the Airport to such flights within sixty (60) days of such closure.
3. The City is permanently closed as an airport by act of any federal, state or local government agency having competent jurisdiction.
4. The City is unable to use the Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of the airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of the Airport, or any part thereof, for airport purposes, and such injunction remains in force for a period of at least sixty (60) days.
5. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Operator from conducting its operations, and such restrictions shall continue for a period of at least sixty (60) days.

Section 10.02 Remedies for City's Default.

Upon the occurrence of an "Event of Default by City," the Operator shall have the right to suspend or terminate this Agreement and all rentals, fees and charges payable by Operator under this Agreement shall abate during a period of suspension or shall terminate, as the case may be. In the event that Operator's operations at Airport should be substantially restricted by action of any governmental agency having jurisdiction thereof, then Operator shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored. In addition to its remedy of termination, the Operator shall be entitled to all other remedies available to it by law or equity, and all such remedies shall be cumulative.

Section 10.03 Limitation of Liability.

In no event shall either party be entitled to recover against the other party any special, incidental, punitive, indirect, or consequential damages (or equivalents thereof no matter how claimed, computed or characterized) arising out of or in connection with this Agreement, regardless of whether any such liability shall be claimed in contract, warranty, equity, tort (including negligence, gross negligence and strict tort liability), or otherwise.

ARTICLE 11 **RIGHTS UNDER TERMINATION**

Section 11.01 Fixed Improvements.

It is the intent of this Agreement that the leasehold improvements, alterations and items affixed thereto shall be and remain the property of the Operator during the entire term of this Agreement or any extension or renewal. Upon termination of this Agreement or any extension or renewal, ownership of leasehold improvements, alterations and items affixed thereto shall automatically revert to the City and the Operator shall have no further rights under this Agreement nor shall it have any interest in the Premises, buildings or improvements, constructed thereon, subject however to the provisions of Section 2.03(10).

Section 11.02 Personal Property.

Upon termination of this Agreement, the Operator shall remove all personal property, and items not affixed, from the Premises within ninety (30) days after said termination and restore the Premises to its original

condition. If the Operator fails to remove said personal property, said property shall revert to City ownership and may thereafter be removed by the City at Operator's expense.

ARTICLE 12 ASSIGNMENT AND SUBLETTING

Section 12.01 Assignment.

Except as otherwise provided in Section 4.10 hereof, the Operator shall not assign this Agreement, or any part hereof, in any manner whatsoever, or assign any of the commercial operating privileges recited herein without the prior written consent of the City and under such terms and conditions as City may impose as set forth in Section 4.11.C. The term "assignment" includes, without limitation, a transfer of a majority in interest of the ownership of Operator or transfer by operation of law. **PROVIDED, HOWEVER**, in the event the City approves such assignment, Operator shall remain liable to the City for the remainder of the term of this Agreement to pay to the City any portion of the rental and fees provided for herein upon failure of the assignee to pay the same when due. Said assignee shall not assign said Agreement except with the prior written approval of the City and the Operator herein, and any assignment by the Operator to any third party shall contain a clause to this effect.

Section 12.02 Subletting.

Operator shall not sublet the whole of the Premises without the prior written consent of City, which may be withheld in City's sole discretion. **PROVIDED, HOWEVER**, Operator may sublet portions of the hangar to airplane owners without the City's prior written consent, in pursuance of Operator's operating authority set forth in Sections 2.01 and 2.02 above. The operator shall ensure all individuals subletting space in the premises have commercial operating or concession agreements with the Airport, if applicable to such subtenant's use of the Premises, prior to sublet of space. *In that event, Operator shall maintain a current list of sublease / rental tenants on file with the City including the name, address, phone number, aircraft type, and N-number of the aircraft, of each tenant.*

ARTICLE 13 QUIET ENJOYMENT

The City covenants that the Operator, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of the Operator to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the Premises for the term of this Agreement, free from molestation, or disturbance.

ARTICLE 14 GENERAL PROVISION

Section 14.01 Non-Interference with Operations of Airport.

The Operator, by accepting this Agreement, expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Operator.

The City shall maintain and keep in repair the Airport landing areas, including taxiways and aircraft parking aprons, and shall have the right to direct and control all activities of the Operator in this regard.

Section 14.02 Attorney's Fees.

Except as otherwise specified in this Agreement, each party shall bear responsibility for its own attorney fees.

Section 14.03 Taxes and Special Assessments.

The Operator shall pay any leasehold interest tax assessed on said Premises and all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Operator located on the Premises, or other permitted portions of the Airport. The Operator shall pay all

real estate taxes attributed to the Operator's leasehold interest and all other real estate taxes which may be levied and assessed which are attributed to the Operator's leasehold interest in the Premises. The Operator shall pay all personal property taxes which may be levied and assessed against equipment, merchandise or other personal property belonging to the Operator located on the Premises. The Operator shall pay all sales or use taxes and assessments, Business & Occupancy taxes, license fees or other charges of any kind or nature, without exception, levied or assessed, arising out of the activities conducted on, and/or the occupancy of, the Premises.

Section 14.04 Right to Contest.

The Operator shall have the right to contest the validity or amount of any tax, assessment or charge, lien or claim of any kind in with respect to the Premises. Operator shall, if the City requires the same in writing and if the taxes or other assessments have not been paid under protest or otherwise escrowed or provided for, furnish reasonable security for the payment of all liability, costs and expenses at the end of the litigation, and Operator, so long as the matter shall remain undetermined by final judgment, shall not be considered in default hereunder by the nonpayment thereof; **PROVIDED, HOWEVER**, that Operator shall not, under these provisions, permit the premises or any buildings or improvements situated thereon, to be sold or forfeited, and failure by the Operator to do what is necessary to prevent any such sale or forfeiture within ten (10) days from the publication or receipt of notice for sale or forfeiture, shall be deemed to be a default hereunder, and the City may, at its option, pay any such sum as may be required to avoid the sale or forfeiture and seek reimbursement for its cost from the Operator or ownership of the buildings or improvements involved.

Section 14.05 License, Fees and Permits.

The Operator shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

Section 14.06 Non Exclusive Rights.

It is hereby specifically understood and agreed between the parties that nothing herein contained shall be construed as granting or authorizing the granting of exclusive rights to the Operator or others, as defined in Section 308 of the Federal Aviation Act of 1958, as amended.

Section 14.07 Paragraph Headings.

The Section paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any of the provision of this Agreement.

Section 14.08 Interpretations.

This Agreement shall be interpreted in accordance with the laws of the State of West Virginia.

Section 14.09 Non-Waiver.

No waiver of any condition or covenant in this Agreement contained, or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Section 14.10 Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 14.11 Binding Effect.

This Agreement, including all of its covenants, terms, provisions and conditions, shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

Section 14.12 No Partnership.

Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent or of a partnership or joint venture or any relationship between the City and Operator other than the relationship of the City and Operator.

Section 14.13 Duty to be Reasonable.

Wherever in this Agreement the City is to give its consent, approval or otherwise exercise discretion in judgment, such consent, approval or judgment discretion shall not be unreasonably exercised or unreasonably withheld. When the City is called upon to give its consent or approval, or otherwise exercise its discretion and judgment as to financial matters which affect the City and the continuing operations of the Airport, the exercise of its judgment as to any such matters shall be solely and completely within the discretion of the City.

Section 14.14 Notices.

Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notices or payments shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, addressed to:

| CITY | OPERATOR |
|--|--|
| Airport Director Morgantown Municipal Airport 100 Hart Field Road Morgantown, West Virginia 26505 | John Mayfield Shaft Drillers International LLC 130 Meadow Ridge Road Mt. Morris, PA 15349 |

With a copy for City to:

Ryan P. Simonton, Esq.
KAY CASTO & CHANEY, PLLC
rsimonton@kaycasto.com

Or such other place as either party shall, by written directive, designate in the manner herein provided.

Section 14.15 Entire Agreement.

This Agreement is the entire agreement between the parties and all prior or contemporaneous negotiations or agreements are deemed merged herein. There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Operator and the City other than herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the City or the Operator unless in writing and signed by them.

Section 14.16 Authorization and Execution.

By its execution hereof, Operator and the City warrant that all necessary corporate action has been taken with regard to the authorization and execution of this Agreement and that the individual(s) execution this Agreement and Lease for Hangar Site(s) on behalf of Operator are is/are duly authorized to do so. Whoever signs this Agreement on behalf of Operator and the City hereby confirms that they have the appropriate authority and have been so authorized to execute this Agreement on behalf of Operator and City, respectively.

Section 14.17. Subordination.

This Lease and all provisions hereof are subject and subordinate to [the terms and conditions of the instruments and documents under which Landlord acquired the subject property from the United States of America/the provisions of any existing or future agreements between Landlord and the United States of America, relative to the operation or maintenance of the airport, including but not limited to, agreements governing the expenditure of federal funds for airport improvements] and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the documents for the Premises between the Landlord and the United States of America, and any existing or subsequent amendments

thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Landlord pertaining to the Airport.

IN WITNESS WHEREOF, the parties have caused this **Commercial Operating Agreement / Lease Agreement** to be executed on their behalf by their duly authorized officers:

City of Morgantown:

Shaft Drillers International LLC

By: _____

By: _____

City Manager

Date: _____

Date: _____

Witness: _____

Witness: _____

Name: _____

Name: _____

**AN ORDINANCE OF THE CITY OF MORGANTOWN
AMENDING ARTICLE 923 OF THE CITY CODE
ENTITLED “INDUSTRIAL WASTES” TO AMEND THE PERMITTED DISCHARGE
LIMITS FOR ARSENIC**

The City of Morgantown hereby ordains as follows:

Section 1. Findings and Purpose.

The City of Morgantown has received from the Morgantown Utility Board (“MUB”) a request to amend the Industrial Waste Article of the City Code as a result of an update to the City of Morgantown’s National Pollutant Discharge Elimination System (“NPDES”) Permit issued by West Virginia Department of Environmental Protection (“WVDEP”) upon application by MUB. This ordinance proposes the requested change.

Section 2. Adoption of Amendment to Article 923 of the City Code.

Article 923 of the City Code, entitled “Industrial Wastes” is hereby amended as follows (new matter underlined; deleted matter ~~stricken~~):

Sec. 923.06. – Pollutant limitations.

(a) The General Manager is authorized to establish local Limits pursuant to 40 CFR 403.5(c).

(b) Limitations for specific pollutants of concern that may cause pass through, inhibition or cause a degradation of sludge quality have been developed by the Board for specific pollutants of concern. The limits are derived from a mass basis and are allocated on a mass proportion basis to each individual industrial user. The Board also reserves the right to convert mass allocations to concentration based permit limitations and to impose limitations as monthly average, daily maximum, or instantaneous maximum limitations. The Board may derive daily maximum limits by applying a factor of approximately 1.5 to the monthly average limits. Specific limitations for any individual industrial user are delineated in the user's contribution permit.

The following specific total pollutant mass limitations are available to industrial users. These total pollutant mass limitations are monthly average limits. Individual mass limitations are fractional amounts of the listed totals and are proportionally based on the individual industry's contributions. Pollutants not listed may be regulated by the industry's specific wastewater contribution permit.

| | |
|----------------|---------------|
| Cadmium | 0.11 lbs./day |
| Total Chromium | 0.90 lbs./day |

| | |
|---------|--------------------------------------|
| Copper | 2.30 lbs./day |
| Cyanide | 1.60 lbs./day |
| Lead | 1.10 lbs./day |
| Mercury | 0.03 lbs./day |
| Silver | 2.30 lbs./day |
| Zinc | 6.30 lbs./day |
| Arsenic | 0.28 <u>0.20</u> lbs./day |

(c) The General Manager may develop best management practices (BMPs), by ordinance or in individual wastewater discharge permits to implement local limits and the requirements of Section 923.04.

Section 3. Repeal, Savings, Severability.

Any section of this Code repealed or modified by a subsequent ordinance will continue in force until the effective date of the repealing ordinance.

The repeal or modification of any part of this Code does not affect any existing right acquired, or liability or obligation incurred, under the code sections amended or repealed unless the modifying ordinance expressly so provides. Any repealed or modified part of this Code will remain in force for the purpose of sustaining any proper legal proceedings and prosecutions related to the enforcement of such right or liability brought prior to the repeal or modification.

The repeal of any repealing ordinance, clause, or provision does not revive any former ordinance, clause, or provision unless expressly provided by ordinance.

If any provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction or other entity or agency having jurisdiction to make such determination, the remainder of this Ordinance and the application to other persons or circumstances remain in effect.

Section 4. Effective date; application. This ordinance shall be effective upon adoption. This Ordinance does not affect rights, duties, or liabilities that matured, penalties that were incurred, and proceedings that were begun, before its effective date. The law remains in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture or liability.

Section 5. Recording of ordinance. The City Clerk is directed to obtain all signatures required by the form of Ordinance adopted and maintain an executed original ordinance with the official records of the City of Morgantown, to be maintained, preserved, and accessed in accordance with the laws of the State of West Virginia and the City of Morgantown, and to take the following additional actions: None.

FIRST READING: _____

Mayor

SECOND READING: _____

City Clerk

ADOPTED: _____

FILED: _____

**Order of the City Council
of The City of Morgantown, West Virginia
Granting Applicant an Exemption from the Requirement to Register a Structure as Vacant**

The City Council of the City of Morgantown Orders as follows:

At a hearing conducted January 28, 2025, the City Council of The City of Morgantown, West Virginia, considered an application for exemption from the requirement to register a structure as vacant under the City of Morgantown’s Vacant Structures Code, codified at Article 1718 of the City Code, as it may be amended, supplemented, or replaced, at certain real property having the street address 528 Monongalia Avenue, which is owned by Envision Properties, LLC, John Duda, Manager, (the “Application,” attached as **Exhibit 1**). Notice of the hearing was delivered to Mr. Duda of 3303 Darrah Avenue, Morgantown, WV 26508, prior to the hearing in accordance with Article 1718. The hearing was conducted in accordance with procedural rules previously adopted by the City Council (the “Exemption Procedures,”) which were included in the notice of public hearing delivered to Mr. Duda. At the hearing, the Application was presented by Mr. Duda, and the claims on behalf of the City were presented by Acting City Manager Damien Davis. Upon review of the Application and the information received at the public hearing, and for good cause shown, the City Council orders the following:

Findings of Fact

1. The Application seeks an exemption from the requirement to register a structure as vacant under the City of Morgantown’s Vacant Structures Code, codified at Article 1718 of the City Code, as it may be amended, supplemented, or replaced, at certain real property having the street address 528 Monongalia Avenue, all of which is owned by Envision Properties, LLC, for the time period subject of the Application.
2. Prior to the hearing, the City Manager represented to City Council that he had reviewed the application and determined it to be complete. The applicant was notified of the determination of completeness via email. The Application was submitted to City Council for determination in accordance with the rules adopted by City Council.
3. The Application comprised the application form document itself dated July 31, 2024, and prepared by or on behalf of the applicant.
4. During the January 28, 2025 hearing, Council heard argument by Mr. Duda and questioned him regarding the status of 528 Monongalia Avenue.
5. As to the property at 528 Monongalia Avenue, the evidence shows the following:
 - 5.1. The subject property is unoccupied and otherwise vacant from human habitation based upon the applicant’s representations to Council.
 - 5.2. The subject property may presently be in a condition to be inhabited.
 - 5.3. The subject property, and specifically the exterior of the property has been adequately maintained.
 - 5.4. The applicant represents that property repairs are planned to allow occupancy of the property, and the applicant estimates that work can be completed in

calendar year 2025, subject to availability of non-standard size windows and licensed contractors and skilled workers.

- 5.5. The subject property is not currently listed for sale or otherwise being marketed for sale.
- 5.6. At the time of the application for the exemption, the subject property was insured, secured against unauthorized entry, and monitored regularly by the owner.
- 5.7. At the hearing of this request, and in the Application, the applicant represented that the property cannot be occupied at present as mechanical upgrades are being pursued. Specifically, water supply (including hot water tank) and waste lines are being replaced throughout the structure. Additionally, the furnace and air conditioning units are being replaced. A new 200 Amp service entry has been installed at the property (inspected/approved by the City of Morgantown) and electrical upgrades are being scheduled. The structure's single pane windows are also to be replaced with energy efficient windows. There a more than a dozen windows of non-standard sizes thus considerable time is required for window construction and delivery after order placement.

Conclusions of Law

1. City Council has established a procedure for exemption from registration under the Vacant Structures Code as authorized by City Code Section 1718.07(c) and as required as part of any local vacant structures code by West Virginia Code § 8-12-16c(b)(2), which provides that “The governing body of a municipality, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinant (*sic*)¹ period of time.”

2. The purpose of Section 1718 of the *City Code* is detailed as follows:

The purpose of this article shall be to ensure that all vacant structures will be kept weathertight and secure from trespassers, safe for entry by police officers and fire fighters in times of emergency, and to ensure that the structure and its contents do not present a hazard to the public during the time that the building remains vacant.

3. In addition, “Vacant building” is defined by Article 1708 as a building or other structure that is:

- (1) Unoccupied;
- (2) Unsecured and occupied by one or more unauthorized persons; or
- (3) Is without continuous utility service evidencing actual use of water, sewer, electric, and/or gas service to the building for a period exceeding 90 days, but excluding any new building under construction prior to the issuance of a certificate

¹ The Morgantown City Code implements this portion of the requirement as a “determinate” period of time, indicating that an exemption will be granted based upon a specific period of time during which the structure cannot be occupied. The term “determinant,” meaning a factor which decisively affects the nature or outcome, appears to be used erroneously in the state law.

of occupancy for that building and excluding any building granted an exemption by City Council pursuant to Section 1718.07(c).

4. The evidence presented to City Council, and the above Findings of Fact, demonstrate that the Subject Property is unoccupied and therefore qualifies as a vacant structure.

5. Under Section 7.f. of the Exemption Procedures, upon application for exemption from the registration requirement for a vacant structure, “City Council will determine whether an applicant has demonstrated (i) good cause, (ii) that the applicant will be unable to occupy the building, (iii) for a certain period of time.”

6. Section 7.f. defines good cause justifying an exemption as follows:

[G]ood cause supporting the inability to occupy a building means a legal or practical issue that is outside the control of the property owner (as that term is defined in City Code § 1718.03(a)) and which would prevent occupancy of the building despite reasonably diligent efforts by the property owner to occupy the building or permit occupancy by another person. Such good cause may include, subject to the discretion of City Council in each individual case, the existence of contested claims to ownership of the property that cannot be resolved by the property owner and do not allow occupancy of the building, including claims made in probate or other testamentary transfer proceedings; the ongoing renovation of a building necessary to make it fit for occupancy and compliant with law, so long as such renovation is diligently pursued; or the ongoing attempt to sell the building to a new owner, so long as the property is continuously listed for sale, the property owner is actively participating in marketing the property for sale, the property owner is willing to accept purchase offers reasonably approximating the market value of the property, and other occupancy of the property during the marketing period is either not permitted by law or would substantially interfere with the sale of the property. Good cause for exemption does not include disrepair of the property or violations of law at the property, unless the applicant has demonstrated an ongoing renovation identified in the preceding sentence; difficulties in sale or occupancy of the property due to market conditions when an occupant might reasonably be found at current market prices or rates; nor the property owner’s absence from the property, even with intent to return, absent additional factors as may be described in the preceding sentence.

Id.

7. As noted in the Findings of Fact, the applicant offered evidence that the structure is in good repair, that the applicant has plans to repair the structure and market it for occupancy, and that availability of materials and labor is an impediment to completing repairs and occupying the structure. The applicant did not identify a specific time that repairs will be completed or occupancy will be established, but the Exemption Procedures

establish a discrete time for which exemptions may be permitted, ending on July 1 of each year.

8. Under Section 7.f., “If the applicant has established all three elements supporting the exemption to the satisfaction of Council, the application for exemption will be granted.” The applicant has demonstrated good cause for the inability to occupy the property due to the ongoing upgrades to essential services at the property and need for specialized materials and related labor, and an expressed intention to correct the conditions such that they will persist only for a limited period of time allowed by the Exemption Procedures, i.e. until July 1, 2025. Accordingly, the application for exemption must be granted pursuant to the Exemption Procedures. The property is exempt from registration under the Vacant Structures Code until July 1, 2025, and any and all prior fees for registration as a vacant structure for the registration year beginning July 1, 2024 and ending June 30, 2025 under the Vacant Structures Code are waived by entry of this Order, and, if paid, will be refunded to the applicant within ninety (90) days of the entry of this Order. This Order has no application and effect on the duty to register the structure or pay any associated fees after July 1, 2025. The City Clerk is directed to deliver a copy of this decision to the applicant by electronic mail.

Adopted this ____ day of February, 2025:

M. Joe Abu-Ghannam, Mayor

Christine Wade, City Clerk