



**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 18, 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.** February 4, 2025, Special Meeting Minutes

**C.** February 4, 2025, Regular Meeting Minutes

**D.** February 11, 2025, Special Meeting Minutes

**5. CORRESPONDENCE:**

**A.** Aliene Berry Proclamation

**B.** William Blosser Proclamation - Planning Commission

**C.** Black History Month Proclamation - Annie Cronan Yorick Human Rights Commission  
Chair

**D.** Presentation - Maria Smith, Mountain Line Executive Director - Access Pass status update

**6. PUBLIC HEARINGS:**

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

**B. An Ordinance Authorizing a Commercial Lease and Operating Agreement with Shaft  
Drillers International at the Morgantown Municipal Airport**

**C. An Ordinance Amending Article 923 entitled "Industrial Waste"**

7. **UNFINISHED BUSINESS:**

**A.** Consideration of **APPROVAL** of (Second Reading) of **An Ordinance Authorizing MOU among City, Building Commission, and WVU Hospitals, Inc.** (*First Reading 2/4/2025*)

**B.** Consideration of **APPROVAL** of (Second Reading) of **An Ordinance Authorizing a Commercial Lease and Operating Agreement with Shaft Drillers International at the Morgantown Municipal Airport** (*First Reading 2/4/2025*)

**C.** Consideration of **APPROVAL** of (Second Reading) of **An Ordinance Amending Article 923 entitled "Industrial Wastes"** (*First reading 2/4/2025*)

**D.** Boards & Commissions

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

9. **SPECIAL COMMITTEE REPORTS:**

10. **CONSENT AGENDA:**

11. **NEW BUSINESS:**

**A.** Consideration of **APPROVAL** of **A Resolution Amending the 2024-2025 Budget Revision #5 for the Morgantown General Fund**

**B.** Consideration of **APPROVAL** of **A Resolution amending the 2024-2025 Budget Revision #5 for the Morgantown Capital Escrow Fund**

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 protected by attorney-client privilege pursuant to W. Va. Code 6-9A-4(b)(12)

17. **ADJOURNMENT:**

**For accommodations please call or text 304-288-7072**

# City of Morgantown

## SPECIAL MEETING MINUTES February 4, 2025

**Special Meeting February 4, 2025:** The Special Meeting of the Common Council of the City of Morgantown was held at City Hall Council Chambers on Tuesday, February 4, 2025, at 6:04 p.m.

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

**EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9A-2(5)(A) to consider matters relating to property at 528 Monongalia Avenue. Motion by Deputy Mayor Selin, second by Councilor Trumble, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:05 p.m.

Pursuant to West Virginia State Code Section 6-9A-4(b)(2)(A) to consider matters relating to appointment or employment of public officers or employees.

**Adjournment:**

There being no further business, motion by Councilor Harshbarger, second by Councilor Butcher, to adjourn the meeting. Time: 7:05 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

## SPECIAL MEETING MINUTES February 11, 2025

**Special Meeting February 11, 2025:** The Special Meeting of the Common Council of the City of Morgantown was held at City Hall Council Chambers on Tuesday, February 11, 2025, at 6:03 p.m.

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

**EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9A-4(b)(2)(A) to discuss personnel matters in considering new appointment for Boards and Commissions. Motion by Councilor Trumble, second by Councilor Kawecki, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:04 p.m.

Gabe DeWitt – BZA  
Tony Antonini – Cultural Arts Commission  
Joshua Williamson – Cultural Arts Commission  
Emma Crow-Willard – Library Board of Directors  
Patrick Burden – Cultural Arts Commission  
Joshua Swiger – Cultural Arts Commission  
Andrew White – Cultural Arts Commission

**Adjournment:**

There being no further business, motion by Councilor Butcher, second by Councilor Trumble, to adjourn the meeting. Time: 8:25 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor



## ***PROCLAMATION***

- Whereas,*** Aliene Frances Berry has faithfully served the citizens of Morgantown for 24 years with professionalism, dedication, and unwavering commitment; and
- Whereas,*** Aliene began her career with the City of Morgantown on April 16, 2001, as an Accounting Clerk I in the Municipal Court, where she played an integral role in managing financial records and providing exemplary service to the public; and
- Whereas,*** she further advanced her career by serving as the Secretary for the Fire Department beginning July 25, 2011, contributing to the safety and well-being of our community by providing essential administrative support to first responders; and
- Whereas,*** for the final chapter of her distinguished career beginning in 2014, Aliene has served as Secretary II/Administrative Assistant handling building permits in Code Enforcement, assisting in ensuring the safety and compliance of properties throughout the city, embodying the values of diligence and care; and
- Whereas,*** her exceptional work ethic, attention to detail, and commitment to helping the citizens of Morgantown have left a lasting impact on her colleagues, the departments she served, and the community at large.

***NOW, THEREFORE, BE IT RESOLVED,*** that the City of Morgantown expresses its heartfelt gratitude to

### ***Aliene Frances Berry***

for her 24 years of outstanding service and dedication. Her contributions have made a meaningful difference in our city, and her legacy will be remembered for years to come.

***BE IT FURTHER RESOLVED,*** that the City of Morgantown wishes her all the best in her future endeavors and recognizes her as an exemplary public servant who has set a high standard of excellence for all who follow.

***In Witness Whereof, I,*** Joe Abu-Ghannam, Mayor of the City of Morgantown, West Virginia, hereunto set my hand and cause the Official Seal of the City of Morgantown to be hereto affixed on this 23<sup>rd</sup> day of January 2025.

***Seal:***

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***Joe Abu-Ghannam, Mayor***  
***January 23, 2025***



## ***PROCLAMATION***

***Whereas,*** William Blosser has served the residents of the City of Morgantown as a member of the Planning Commission since November 8, 2013; and

***Whereas,*** in his capacity as a member of the Planning Commission, Mr. Blosser has remained a steady and integral leader in the administration and enforcement of the City's Planning and Zoning Code; and

***Whereas,*** Mr. Blosser has also served the city as a member of the Morgantown Traffic Commission, Pedestrian Safety Board, active with the Suncrest Neighborhood Association and the Neighborhood Coordinating Council; and

***Whereas,*** Mr. Blosser has recently submitted his letter of resignation after serving the community of Morgantown as a citizen planner for over twenty-one years; and

***Whereas,*** Mr. Blosser should be recognized for his service, dedication, and leadership.

***Now therefore,*** I, Joe Abu-Ghannam, Mayor of the City of Morgantown, West Virginia, and on behalf of City Council, City Administration, and all the citizens of Morgantown, publicly extend our sincere gratitude and recognize Mr. William Blosser for his many years of service, dedication, and leadership.

***Seal:***



***Joe Abu-Ghannam, Mayor***  
***November 26, 2024***



## ***PROCLAMATION***

- Whereas,*** during Black History Month, we celebrate the many achievements and contributions made by Black community members to our economic, cultural, spiritual, and political development; and
- Whereas,*** Black History Month grew out of the 1926 establishment of Negro History Week by Carter G. Woodson and the Association for the Study of African American Life and History; and
- Whereas,*** the 2025 Black History Month theme is African Americans and Labor, focusing on the various and profound ways that work of all kinds – free and unfree, skilled, and unskilled, vocational, and voluntary – intersect with the collective experiences of Black people. Indeed, work is and has been at the very center of much Black history and culture; and
- Whereas,*** the observance of Black History Month calls attention to our continued need to battle racism and to build and safeguard a society that live up to its democratic ideals with liberty and justice for all; and
- Whereas,*** The City of Morgantown continues working toward being an inclusive community in which all citizens – past, present, and future – are respected and recognized for their contributions and potential contributions to our community, State, Country, and the world; and
- Whereas,*** The City of Morgantown is proud to honor the history and contributions of Black people in our community and globally.

***NOW, THEREFORE, I,*** Joe Abu-Ghannam, Mayor of the City of Morgantown, West Virginia, and on behalf of City Council and Human Rights Commission do hereby proclaim February 2025 as

## ***Black History Month***

in the City of Morgantown, West Virginia. We encourage our citizens to celebrate our diverse heritage and culture and contribute our efforts to create a more just, peaceful, and prosperous world for all.

***Seal:***

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***Joe Abu-Ghannam, Mayor***  
***February 18, 2025***

City Ordinance

ORDINANCE 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

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

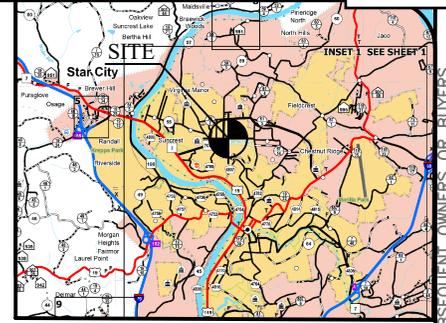
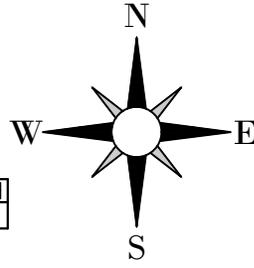
This instrument prepared without the benefit of a title examination by:  
Seth Wilson, Esq.  
BOWLES RICE LLP  
125 Granville Square, Suite 400  
Morgantown, West Virginia 26501  
(304) 285-2500

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.

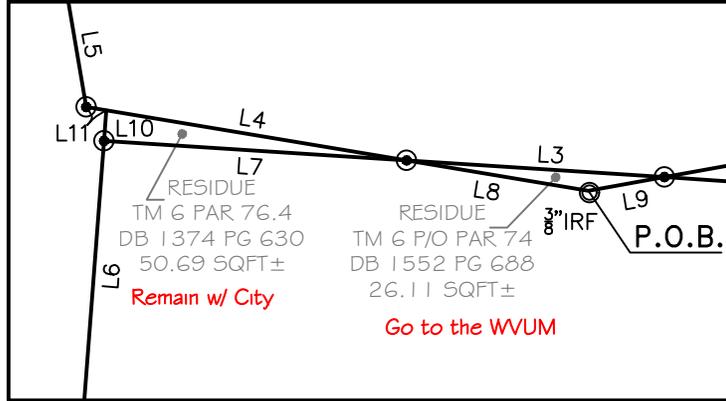


CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	38.50'	15.25'	S 74°47'46" E	15.15'

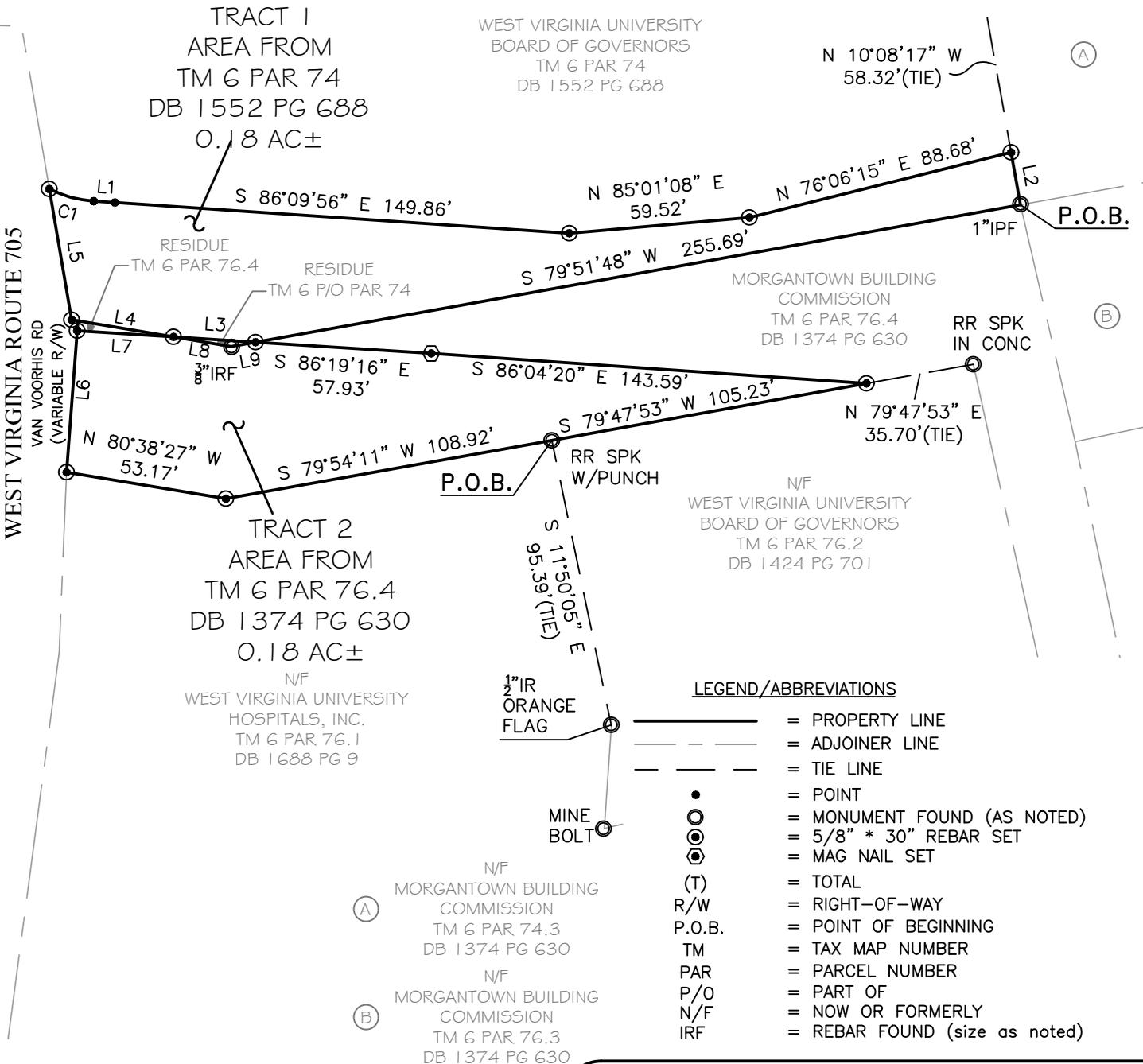
LINE	BEARING	DISTANCE
L1	S 86°08'46" E	6.97'
L2	S 10°08'17" E	17.42'
L3	N 86°19'16" W	27.03'
L4	N 80°34'09" W	33.98'
L5	N 09°43'27" W	43.47'
L6	N 04°21'52" E	46.54'
L7	S 86°19'16" E	31.74'
L8	S 80°34'09" E	19.28'
L9	N 79°51'48" E	8.09'
L10	N 04°21'52" E	3.19'
L11	N 80°34'09" W	2.12'

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

VICINITY MAP  
NOT TO SCALE



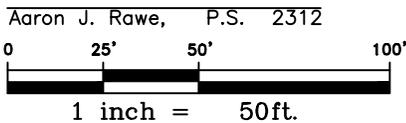
DETAIL  
SCALE 1"=20'



WEST VIRGINIA ROUTE 705

VAN VOORHIS RD  
(VARIABLE R/W)

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



T30-11038

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

**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 7<sup>TH</sup> 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 7<sup>TH</sup> 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 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;

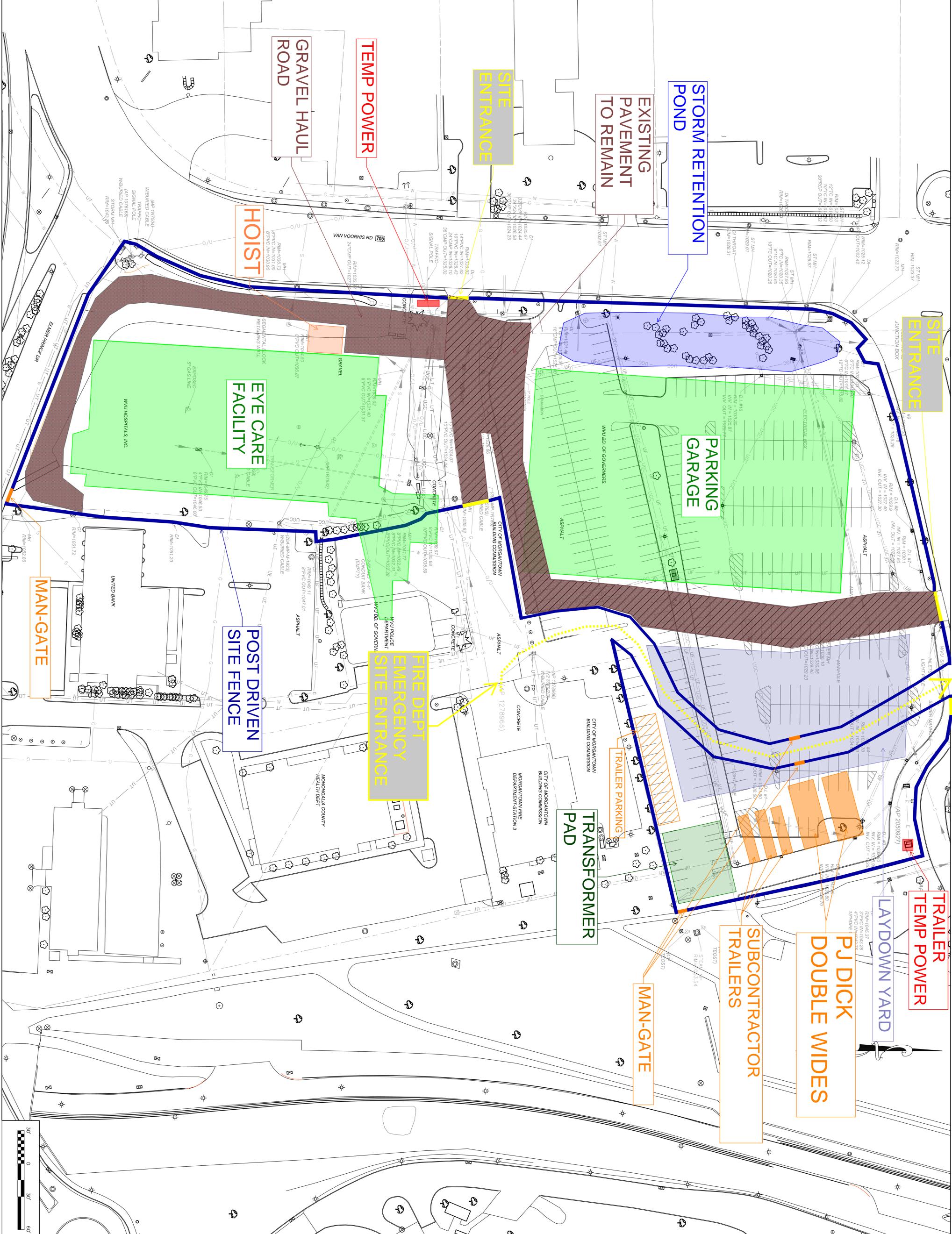
N 76° 06' 15" E 88.68' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said West Virginia University Board of Governors (Parcel 74) and said Morgantown Building Commission (Parcel 74.3), thence with said Morgantown Building Commission (Parcel 74.3);

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.

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



SITE ENTRANCE

STORM RETENTION POND

EXISTING PAVEMENT TO REMAIN

SITE ENTRANCE

TEMP POWER

GRAVEL HAUL ROAD

HOIST

EYE CARE FACILITY

PARKING GARAGE

MAN-GATE

POST DRIVEN SITE FENCE

FIRE DEPT EMERGENCY SITE ENTRANCE

TRANSFORMER PAD

TRAILER PARKING

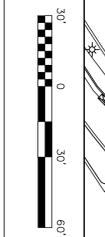
MAN-GATE

SUBCONTRACTOR TRAILERS

PJ DICK DOUBLE WIDES

LAYDOWN YARD

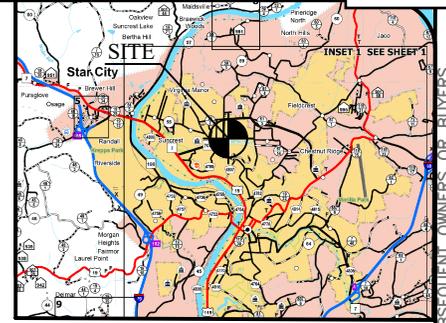
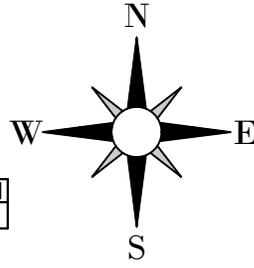
TRAILER TEMP POWER



**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.

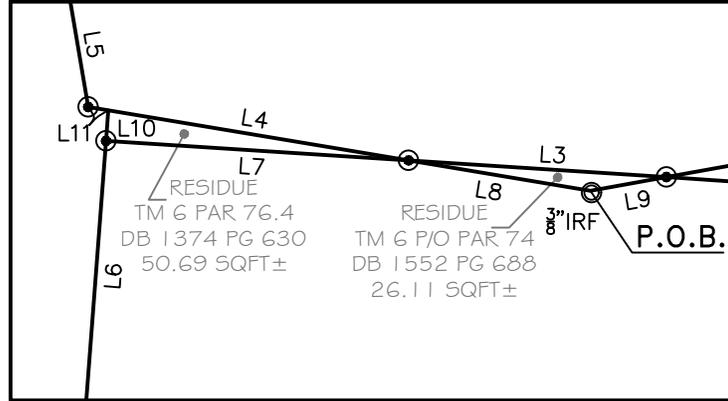


CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	38.50'	15.25'	S 74°47'46" E	15.15'

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'

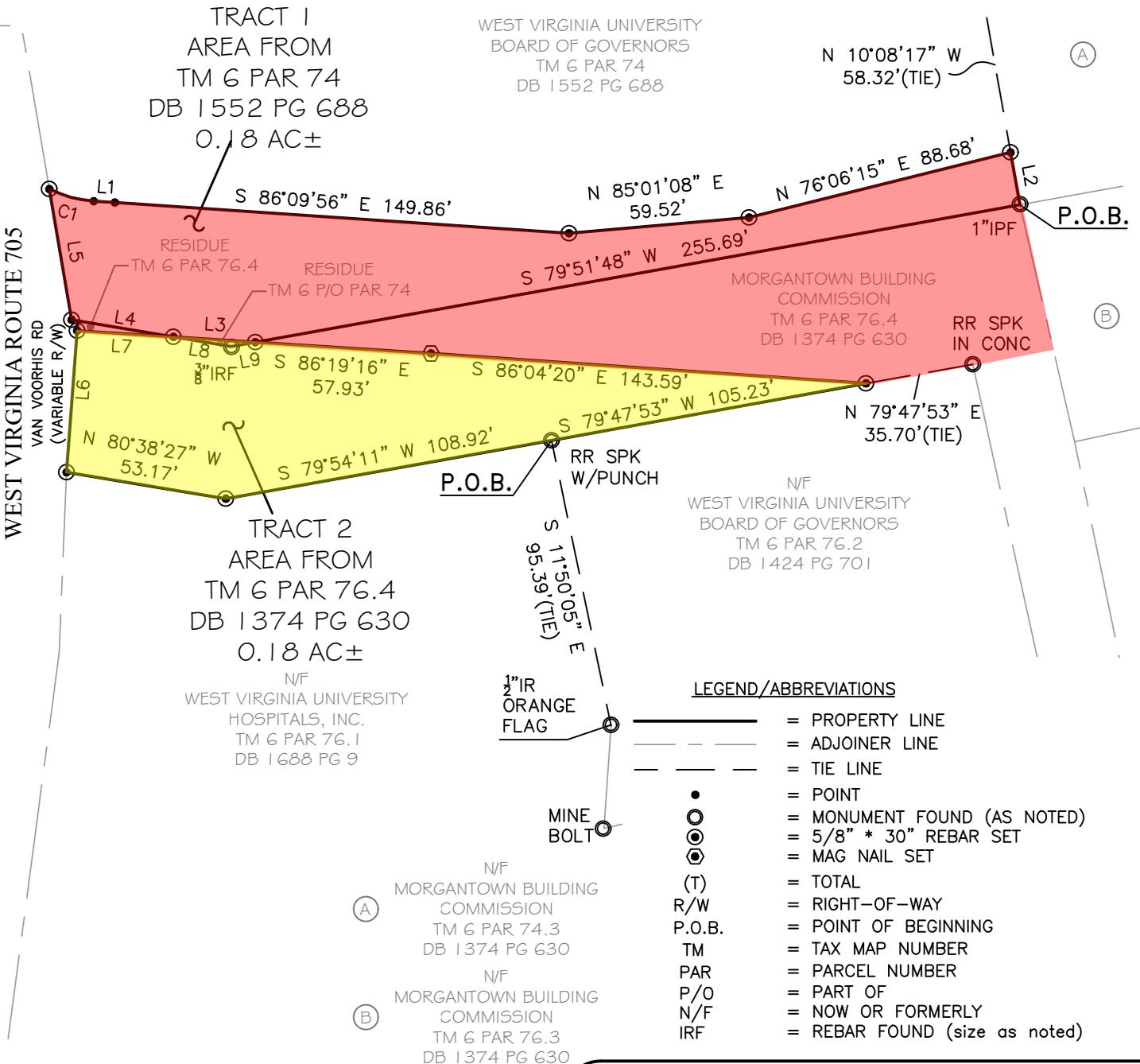
BASIS OF BEARING  
WV STATE PLANE NORTH  
NAD 83(2011)

VICINITY MAP  
NOT TO SCALE



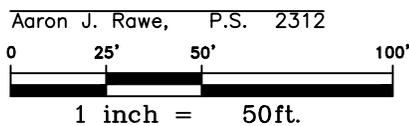
DETAIL  
SCALE 1"=20'

- (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

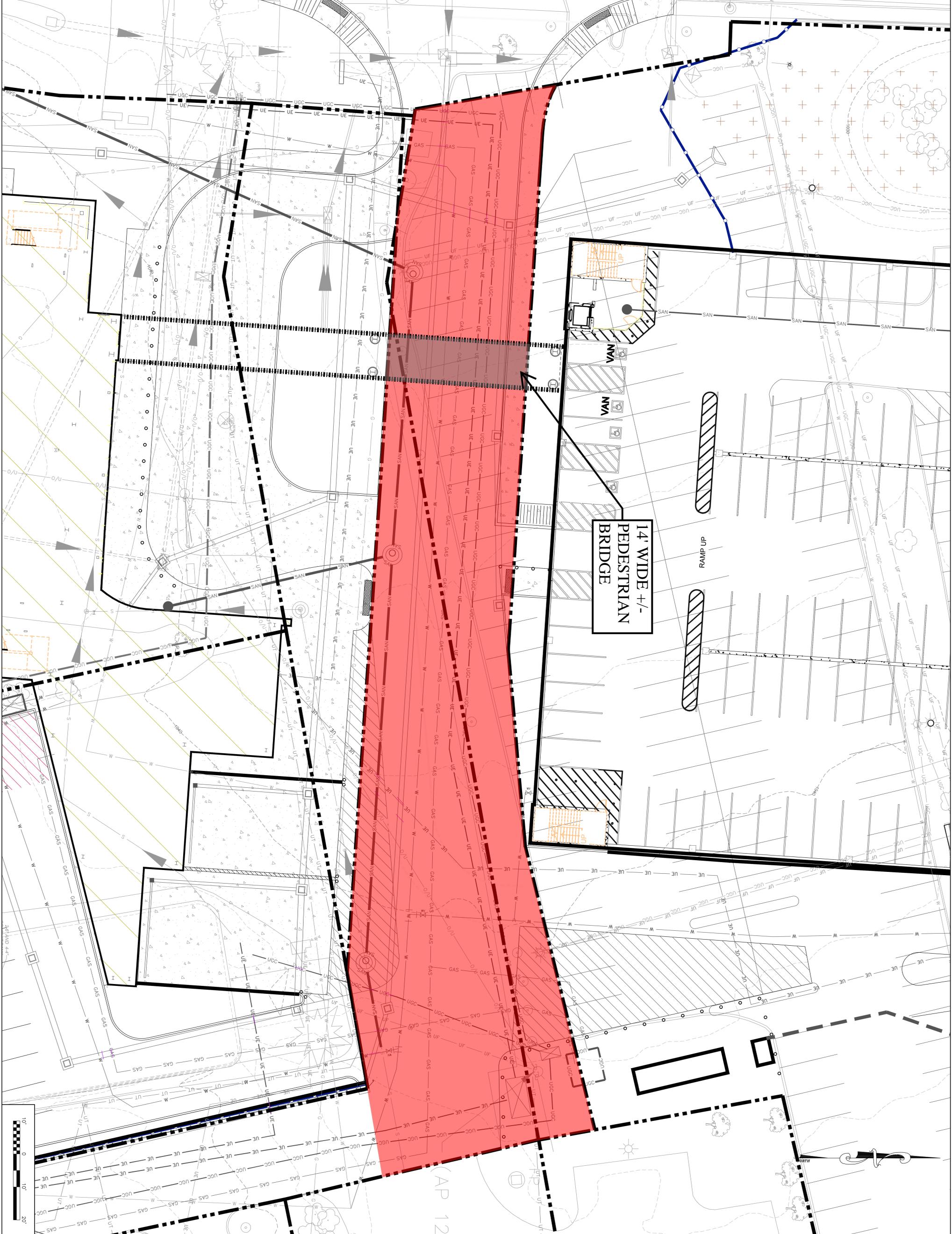
**PLAT OF SURVEY FOR**  
WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS  
SHOWING  
PROPOSED LAND SWAP  
OF THE  
MORGANTOWN 7TH WARD CORP WEST VIRGINIA  
MONONGALIA COUNTY JULY 2024

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: cirvine

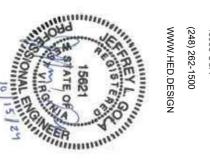
THIS SURVEY IS NOT VALID WITHOUT ORIGINAL BLUE SIGNATURE AND SEAL. DECLARATIONS MADE HEREIN ON THE DATE INDICATED ARE TO THE OWNERS(S) OR BUYER(S) LISTED BELOW AND ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS OR BUYERS.

**EXHIBIT E  
TO  
EASEMENT AGREEMENT**

Depiction of Pedestrian Sky Bridge Easement



2023-WV-002-001  
 CITY PROPERTY  
 CITY-P



**HED**  
 2913 Northwasm Hwy  
 Suite 201  
 48033 USA  
 (249) 252-1500  
 WWW.HEDDESIGN.COM

**THRASHER**  
 ENGINEERING

**WVUM Ruby Eye Institute**

**WVU Medicine**

Morganston  
 WV 26506  
**Date** 11/20/2023  
**Issued For** Schematic Design  
 10/15/2024 Construction Documents

**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 7<sup>TH</sup> 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 7<sup>TH</sup> 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;

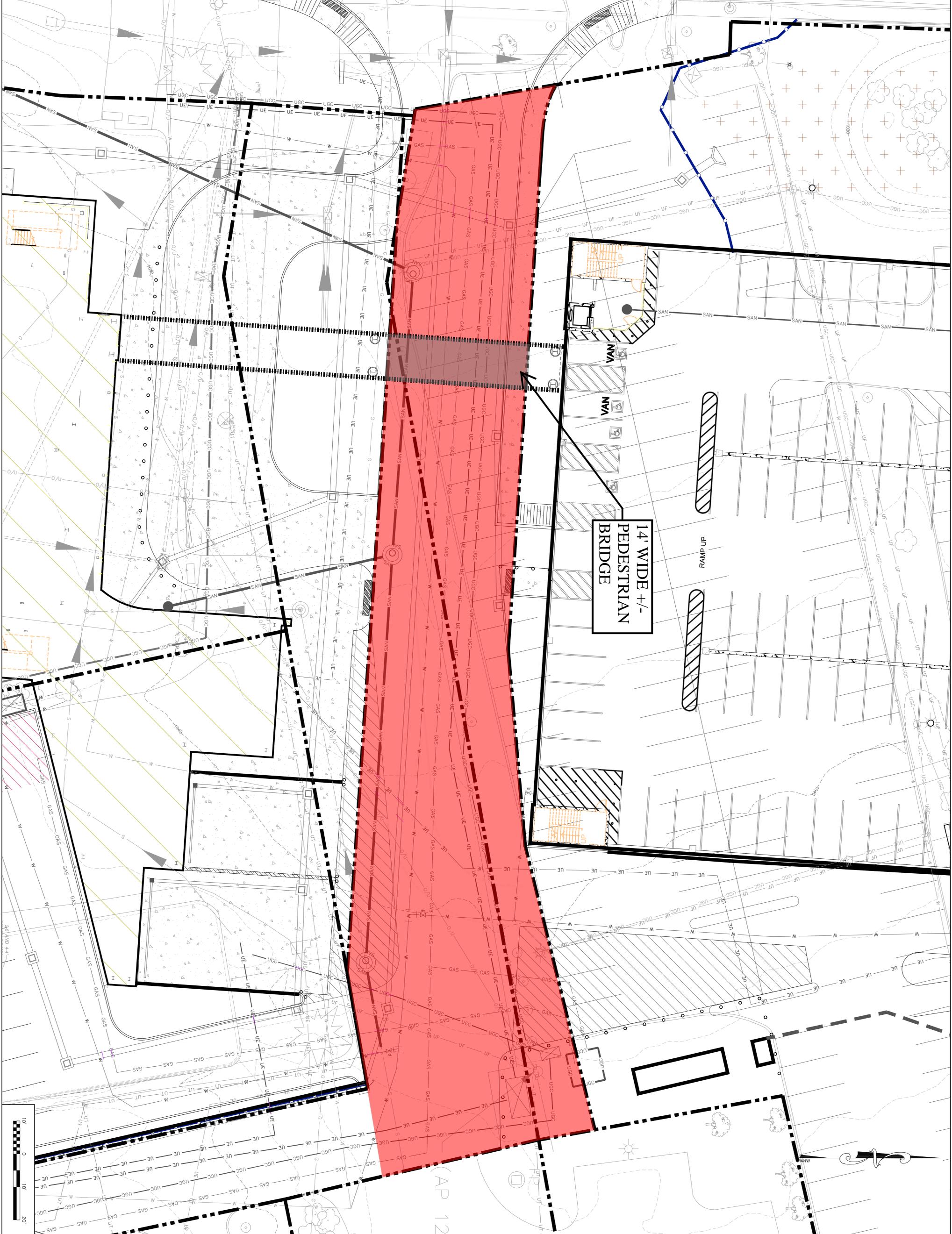
S 86° 04' 20" E 143.59' to a 5/8" iron rebar with cap (Thrasher) set on a line common to said Morgantown Building Commission (Parcel 76.4) and West Virginia University Board of Governors (Parcel 76.2), thence with said West Virginia University Board of Governors (Parcel 76.2);

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



14' WIDE +/- PEDESTRIAN BRIDGE

RAMP UP

(AP 12)

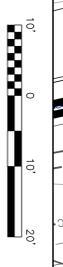


EXHIBIT F  
TO  
MEMORANDUM OF UNDERSTANDING  
Plat of Temporary Construction Access Road

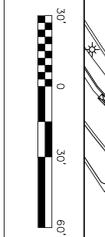
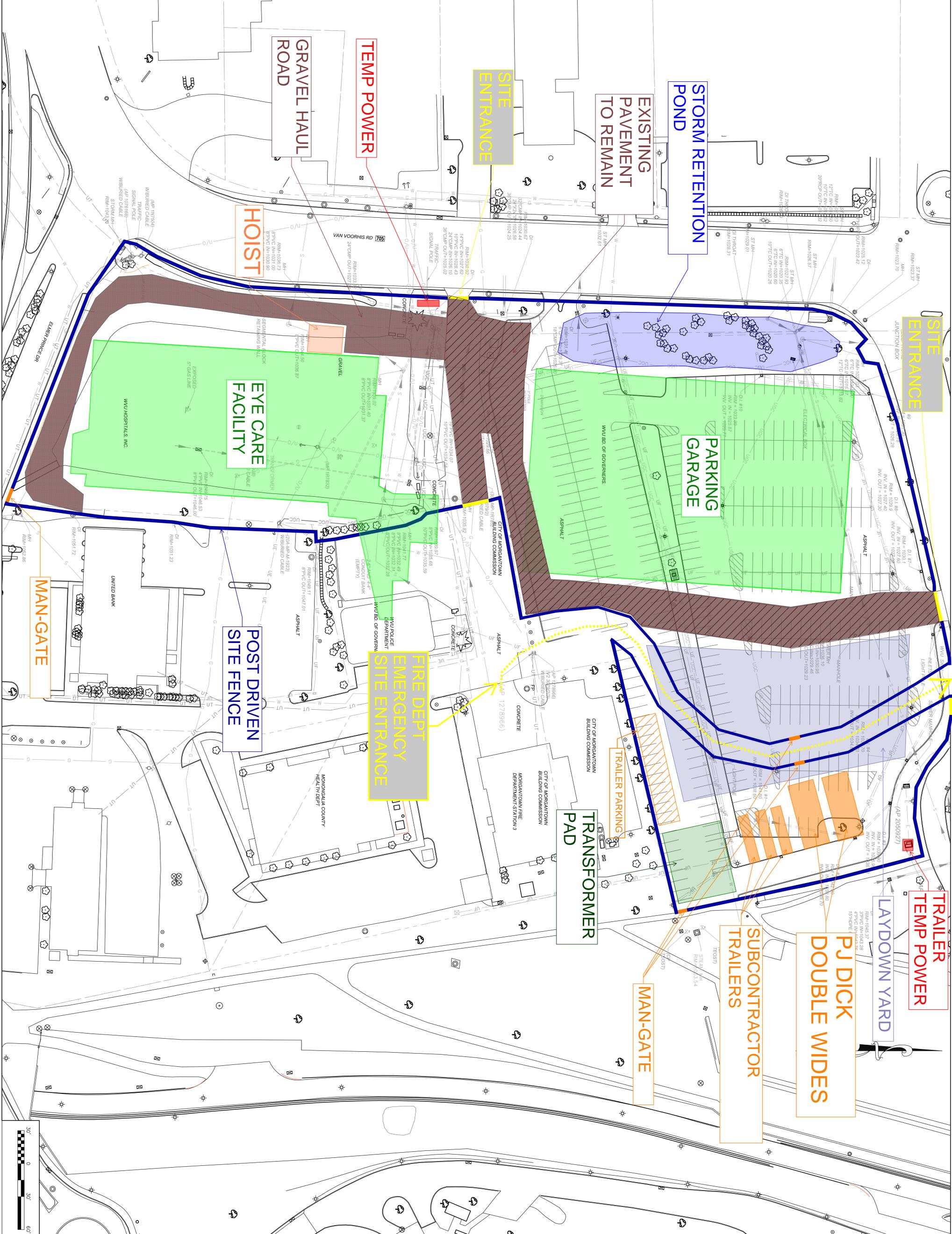


EXHIBIT G  
TO  
MEMORANDUM OF UNDERSTANDING  
Partial Release and Subordination Agreement

# PARTIAL RELEASE AND SUBORDINATION AGREEMENT

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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 7<sup>TH</sup> 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);

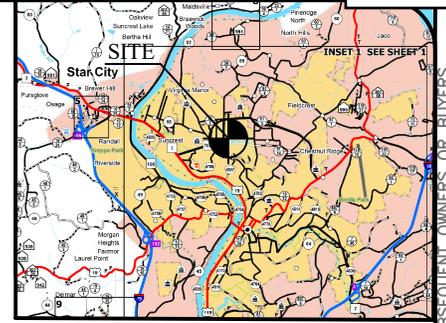
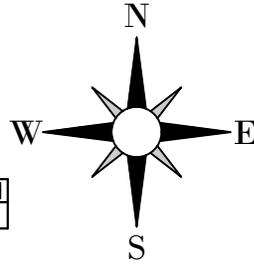
S 79° 47' 53" W 105.23' to the Point of Beginning, containing 0.18 acres, more or less, as shown on a plat prepared by The Thrasher Group in July 2024.

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.

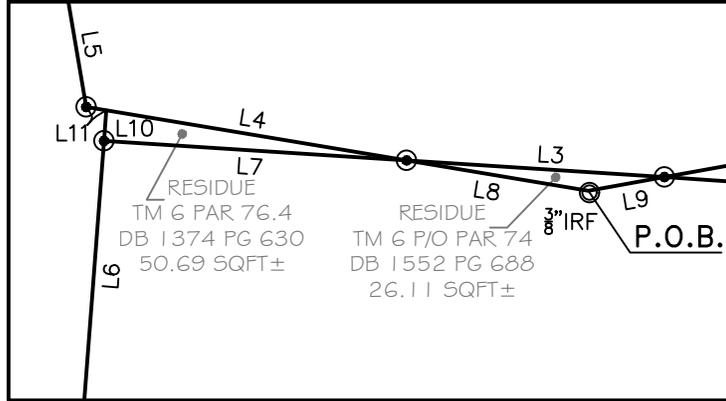


CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	38.50'	15.25'	S 74°47'46" E	15.15'

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'

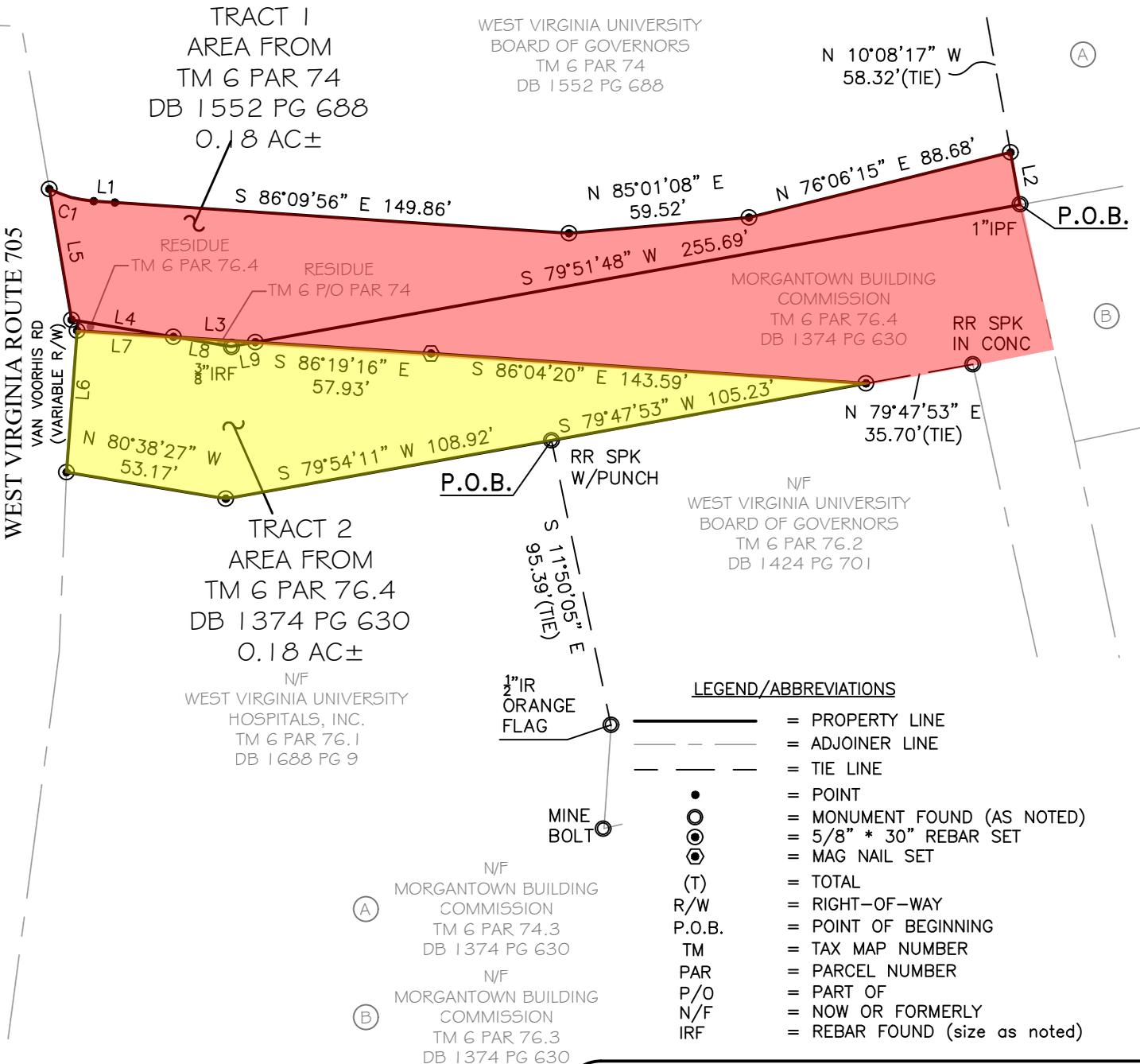
BASIS OF BEARING  
WV STATE PLANE NORTH  
NAD 83(2011)

VICINITY MAP  
NOT TO SCALE



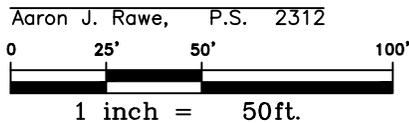
DETAIL  
SCALE 1"=20'

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



**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.

**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 7<sup>TH</sup> 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 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.

**WITNESSETH:**

**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.

[Remainder of Page Intentionally Blank]

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 7<sup>TH</sup> 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° - 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 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 7<sup>TH</sup> 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 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° - 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 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 7<sup>TH</sup> 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.

**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: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

\_\_\_\_\_

City Clerk

FILED: \_\_\_\_\_

**City of Morgantown**  
**Morgantown Municipal Airport**  
**and**  
**Shaft Drillers International LLC**  
**Commercial Lease &**  
**Operating Agreement**

**TABLE OF CONTENTS**

ARTICLE 1 PREMISES ..... 1

    Section 1.01 Demised Premises ..... 1

    Section 1.02 Acceptance of Demised Premises ..... 1

    Section 1.03 Use of Demised Premises ..... 1

    Section 1.04 Prohibited Uses ..... 2

ARTICLE 2 OBJECTIVES AND PURPOSE OF LEASE ..... 2

    Section 2.01 Use of Premises. .... 2

    Section 2.02 Prohibited Uses. .... 3

    Section 2.03 Conduct of Operations on Premises. .... 3

ARTICLE 3 TERM, RENT AND ADJUSTMENTS TO RATES AND CHARGES ..... 4

    Section 3.01 Initial Term. .... 4

    Section 3.02 Options to Renew. .... 4

    Section 3.03 Ground Rent. .... 5

    Section 3.04 Commission on Gross Receipts. .... 5

    Section 3.05 Future Adjustments of Rents and Fees. .... 5

    Section 3.06 Holding Over. .... 5

    Section 3.07 Late Charges. .... 6

    Section 3.08 Futute Adjustments of Rents and Fees. .... 6

    Section 3.09 Financial and Credit History. .... 6

    Section 3.10 Monthly Gross Revenue Report. .... 6

    Section 3.11 Annual Special Report Audit Required. .... 6

    Section 3.12 Waiver of Annual Audit. .... 6

ARTICLE 4 OPERATOR’S IMPROVEMENTS AND FUTURE CONSTRUCTION ..... 6

    Section 4.01 Construction of Improvements for Operator’s Commercial Activities. .... 6

    Section 4.02 Time for Construction of Operator’s Improvements. .... 7

    Section 4.03 Approvals for Operator’s Improvements and All Future Construction. .... 7

    Section 4.04 Extension of Utilities or Special Facilities. .... 7

    Section 4.05 Construction of Additional or Future Improvements. .... 8

    Section 4.06 Alterations or Repairs to Premises. .... 8

    Section 4.07 Lien Indemnification. .... 8

    Section 4.08 Cost of Construction and Alterations. .... 8

    Section 4.09 As-built Drawings. .... 8

    Section 4.10 Security Interest on Leasehold Improvements for Construction. .... 8

    Section 4.11 Ownership of Improvements. .... 9

    Section 4.12 Performance Bonds. .... 11

ARTICLE 5 OBLIGATIONS OF OPERATOR ..... 11

    Section 5.01 Net Lease. .... 11

    Section 5.02 Maintenance and Operation. .... 11

    Section 5.03 Utilities. .... 12

    Section 5.04 Trash, Garbage, Etc. .... 12

    Section 5.05 Signs. .... 12

    Section 5.06 Nondiscrimination. .... 12

    Section 5.07 Observance of Statutes and Regulations. .... 14

    Section 5.08 Hazard Lights. .... 14

    Section 5.09 Airport Security. .... 14

ARTICLE 6 OBLIGATIONS OF THE CITY ..... 15

    Section 6.01 Operation as a Public Airport. .... 15

    Section 6.02 Ingress and Egress. .... 15

ARTICLE 7 CITY’S RESERVATIONS ..... 15

    Section 7.01 Improvement, Relocation or Removal of Structure. .... 15

    Section 7.02 Inspection of Premises. .... 15

    Section 7.03 Audit Books and Records of Operator..... 15

ARTICLE 8 INDEMNITY AND INSURANCE ..... 16

    Section 8.01 Indemnification. .... 16

    Section 8.02 Insurance. .... 16

    Section 8.03 Environmental Impairment..... 16

    Section 8.04 Fire and Extended Coverage Insurance..... 17

    Section 8.05 Waiver of Subrogation. .... 17

    Section 8.06 Application of Insurance Proceeds. .... 17

    Section 8.07 Performance Bonds..... 17

    Section 8.08 Destruction of Premises (Uninsured Cause). .... 17

ARTICLE 9 CANCELLATION BY THE CITY ..... 18

    Section 9.01 Events of Default by Operator. .... 18

    Section 9.02 Remedies for Operator’s Default. .... 18

ARTICLE 10 CANCELLATION BY OPERATOR FOR EVENTS OF DEFAULT BY CITY ..... 19

    Section 10.01 Event of Default by City. .... 19

    Section 10.02 Remedies for City’s Default. .... 20

ARTICLE 11 RIGHTS UNDER TERMINATION ..... 20

    Section 11.01 Fixed Improvements. .... 20

    Section 11.02 Personal Property. .... 20

ARTICLE 12 ASSIGNMENT AND SUBLETTING ..... 21

    Section 12.01 Assignment. .... 21

    Section 12.02 Subletting ..... 21

ARTICLE 13 QUIET ENJOYMENT ..... 21

ARTICLE 14 GENERAL PROVISION ..... 21

    Section 14.01 Non-Interference with Operations of Airport. .... 21

    Section 14.02 Attorney’s Fees. .... 21

    Section 14.03 Taxes and Special Assessments. .... 21

    Section 14.04 Right to Contest. .... 22

    Section 14.05 License, Fees and Permits. .... 22

    Section 14.06 Non Exclusive Rights..... 22

    Section 14.07 Paragraph Headings..... 22

    Section 14.08 Interpretations..... 22

    Section 14.09 Non-Waiver..... 22

    Section 14.10 Severability. .... 22

    Section 14.11 Binding Effect. .... 22

    Section 14.12 No Partnership..... 23

    Section 14.13 Duty to be Reasonable. .... 23

    Section 14.14 Notices..... 23

    Section 14.15 Entire Agreement..... 23

**City of Morgantown  
Morgantown Municipal Airport  
and**

**Lease Summary**

<b>TYPE OF AGREEMENT</b>	Commercial Hangar Ground Lease
<b>TENANT</b>	<b>Shaft Drillers International LLC</b>
<b>REPRESENTATIVE(S)</b>	John Mayfield
<b>NOTICE ADDRESS</b>	130 Meadow Ridge Road Mt. Morris, PA 15349
<b>EFFECTIVE DATE</b>	1/1/2025
<b>TERM</b>	25 Years
<b>RENEWAL OPTIONS</b>	One (1) five (5) year option
<b>TERMINATION DATE</b>	12/31/2049
<b>LEASEHOLD/ASSIGNED PREMISES</b>	Lease of 30,050 ft <sup>2</sup> land for a 20,000 ft <sup>2</sup> hangar
<b>INITIAL RENTAL RATE</b>	\$0.37/ft <sup>2</sup> for land lease = \$11,118.50 per Anum
<b>RENTAL ADJUSTMENT</b>	CPI-W
<b>OTHER FEES, RATES AND CHARGES</b>	N/A
<b>AUTHORIZED USE(S)</b>	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 180<sup>th</sup> 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:

<b>CITY</b>	<b>OPERATOR</b>
<b>Airport Director</b> <b>Morgantown Municipal Airport</b> <b>100 Hart Field Road</b> <b>Morgantown, West Virginia 26505</b>	<b>John Mayfield</b> <b>Shaft Drillers International LLC</b> <b>130 Meadow Ridge Road</b> <b>Mt. Morris, PA 15349</b>

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	<del>0.28</del> <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

FILED: \_\_\_\_\_

## Boards & Commissions Vacant Position List

Updated 2/11/2025

- **Board of Zoning Appeals: 1 Vacant – (City Resident)**  
1 – 2yr – 3yr term: 1/1/2025 – 12/31/2027
- **Civilian Police Review & Advisory Board: 2 Vacant – (City Resident or Work within City)**  
1 – 1yr – 3yr term: 7/5/2023 – 7/4/2026  
1 – 2yr – 3yr term: 7/5/2024 – 7/4/2027
- **Cultural Arts Commission: 2 Vacant -**  
1 – 3yr – 4yr term: 4/1/2024 – 3/31/2028  
1 – 1yr – 4yr term: 4/1/2022 – 3/31/2026
- **Fire Code Board of Appeals: 1 Vacant – City Resident (Legal, Building Contractor, Engineering/Architectural Design)**  
1–3yr terms: 5/2/2022 – 4/30/2025 (Legal)
- **Health & Wellness Commission: 3 Vacant – (City Resident or Work within City)**  
2 – 3yr – 3yr term: 1/1/2024 – 12/31/2026  
1 – 1yr – 3yr term: 1/1/2025 – 12/31/2027
- **Historic Landmarks Commission: 2 Vacant – City Resident**  
1 – 2yr – 4yr term: 11/5/2022 – 11/4/2026  
1 – 4yr – 4yr term: 11/5/2024 – 11/4/2028
- **Human Rights Commission: 3 Vacant – City Resident**  
2 – 2yr – 2yr term: 7/1/2024 – 6/30/2026  
1 – 1yr – 2yr term: 7/1/2023 – 6/30/2025
- **“ICC” Building Code Board of Appeals: 1 Vacant (Architect/Engineer or Bldg. Contractor)**  
1 – 1yr – 5yr term: 5/1/2021 – 4/30/2026
- **Library Board of Director: 1 Vacant – City Resident**  
1 – 4yr – 5yr term: 7/1/2023 – 6/30/2028
- **Personnel Board: 1 Vacant – City Resident**  
1 – 3yr – 1yr – 3yr term: 7/1/2024 – 6/30/2027
- **Planning Commission: 2 Vacant – City Resident (Ward Specific)**  
1 – 1yr – 3yr term: 3<sup>rd</sup> Ward 1/1/2023 – 12/31/2025  
1 – 3yr – 3yr term: 7<sup>th</sup> Ward 1/1/2025 – 12/31/2027
- **Sister Cities Commission: 2 Vacant**  
1 – 1yr – 3yr term: 6/1/2023 – 5/31/2026  
1 – 3yr – 3yr term: 6/1/2022 – 5/31/2025
- **Traffic Commission: 3 Vacant – City Resident (Ward Specific)**  
3 – 3yr term: 4/4/2024 – 4/3/2027 – 2<sup>nd</sup> Ward, 4<sup>th</sup> Ward, and 7<sup>th</sup> Ward
- **Transit Authority Board of Directors: 1 Vacant – (Registered Voter within Mon County)**  
1 – 3yr – 3yr term: 1/1/2023 – 12/31/2025
- **Tree Board: 2 Vacant**  
1 – 3yr – 3yr term: 7/1/2023 – 6/30/2026  
1 – 3yr – 3yr term: 7/1/2024 – 6/30/2027
- **Urban Landscape Commission: 2 Vacant – City Resident (Landscape Design – Horticulture - Plant Health)**  
1 – 3yr – 3yr term: 7/1/2023 – 6/30/2026  
1 – 1yr – 3yr term: 7/1/2024 – 6/30/2027
- **Ward & Boundary Commission: 2 Vacant – City Resident (Ward Specific)**  
2 – 2yr terms: 7/1/2023 – 6/30/2025 - Wards 4 & 7
- **Woodburn Commission: 2 Vacant**  
1 – 2yr – 3yr terms: 1/1/2022 – 12/31/2025  
1 – 1yr – 3yr terms: 1/1/2024 – 12/31/2026

**RESOLUTION**

*WHEREAS, City Administration has presented to Morgantown City Council a 2024-2025 budget revision for the Morgantown General Fund (Revision 05) and has requested that City Council review and approve the same;*

*WHEREAS, the budget revision in question, a copy of which is hereto attached, appear to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;*

*WHEREAS, City Council is of the opinion that it should approve said budget revision.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this \_\_\_\_\_ day of \_\_\_\_\_, 2025, that the 2024-2025 Budget Revision for the Morgantown General Fund Budget (Revision 05) hereto attached is approved.*

\_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*City Clerk*



P: 304-284-7412  
Morgantownwv.gov  
389 Spruce St.  
Morgantown, WV 26505

# **Proposed Budget Revision Fiscal Year Ended June 30, 2025**

## **General Fund – Revision #5**

**This Budget Revision includes:**

- 1. Additional Funds for the Morgantown Public Library**

# 1. Additional Funding for Morgantown Public Library

## Overview:

During a recent review of the City's Self-Funded Health Insurance funding status, it was identified that the City has been invoicing the Morgantown Public Library an incorrect amount for its monthly health insurance benefits. This oversight has been corrected starting in January 2025 and will continue moving forward. However, recognizing the City of Morgantown as a primary funding source for the Morgantown Public Library, we acknowledge the potential financial strain this situation may impose on the Library for the remaining six months of their fiscal year. This budget revision addresses the additional funding required to support the Library through this fiscal year.

## Budget Revisions:

The following budget revisions are proposed:

- **Increase in Budgeted Revenues**
  - An increase in budgeted expenditures for the Morgantown Public Library in the amount of \$11,606.28 for the additional funding they need for their monthly invoices payable to the City of Morgantown's Self-Funded Health Insurance Plan.
  
- **Decrease in Budgeted Expenditures:**
  - \$11,606.28 utilized from the General Fund's Contingency budget.

**Rationale:** This revision ensures that the Morgantown Public Library can meet its financial obligations without disruption, maintaining its operations and services to the community. By reallocating funds from the General Fund's contingency budget, we can provide the necessary support without impacting other planned expenditures.

**Conclusion:** This budget revision reflects our commitment to supporting the Morgantown Public Library and ensuring its financial stability. We are optimistic that this adjustment will help the Library navigate the remaining fiscal year smoothly and continue to serve our community effectively.

**REQUEST FOR REVISION TO APPROVED BUDGET**

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

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

CONTROL NUMBER  
 Fiscal Year Ending: **2024-2025**  
 Fund: **001**  
 Revision Number: **5**  
 Pages: **1 of 1**

**CITY OF MORGANTOWN**  
 GOVERNMENT ENTITY

Person To Contact Regarding Request:  
 Name: **Jonathan Furgison**  
 Phone: **304-284-7407**  
 Fax: **304-284-7418**  
 Email: **jfurgison@morgantownwv.gov**

**389 SPRUCE STREET**  
 STREET OR PO BOX  
**MORGANTOWN**  
 CITY  
**26505**  
 ZIP CODE

**Municipality**  
 Government Type

**REVENUES: (net each acct.)**

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	INCREASE	(DECREASE)	REVISED AMOUNT
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-

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

Explanation for Account # 378, Municipal Specific:   
 Explanation for Account # 369, Contributions from Other Funds:

**EXPENDITURES: (net each acct.)**

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	INCREASE	(DECREASE)	REVISED AMOUNT
444-567.008	Contribution Other Fund - Library	990,000.00	11,606.28	-	1,001,606.28
699-568.00	Contingency	545,007.45	-	(11,606.28)	533,401.17
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-
		-	-	-	-

NET INCREASE/(DECREASE) Expenditures (ALL PAGES) -

**APPROVED BY THE STATE AUDITOR**  
 BY: \_\_\_\_\_  
 Deputy State Auditor, Local Government Services Division Date

\_\_\_\_\_  
 AUTHORIZED SIGNATURE OF ENTITY APPROVAL DATE





# Instructions for Budget Revision File

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

## TOP SECTION

### Person to Contact Regarding Budget Revision

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

### Government Entity -

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

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

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

### Control Number FY

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

### FUND

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

### REV. NO.

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

### PG. OF NO.

Number of pages to this revision.

### Government Type

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

# Instructions for Budget Revision File

## REVENUES: (net each account category)

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

### Column 1 - Account Number

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

### Column 2 - Account Description

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

### Column 3 - Previously Approved Amount

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

### Column 4 - Increase

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

### Column 5 - Decrease

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

### Column 6- Revised Amount

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

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

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

# Instructions for Budget Revision File

## EXPENDITURES: (net each account category)

### Column 1 - Account Number

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

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

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

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

**RESOLUTION**

*WHEREAS, City Administration has presented to Morgantown City Council a 2024-2025 budget revision for the Morgantown Capital Escrow Fund (Revision 05) and has requested that City Council review and approve the same;*

*WHEREAS, the budget revision in question, a copy of which is hereto attached, appear to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;*

*WHEREAS, City Council is of the opinion that it should approve said budget revision.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this \_\_\_\_\_ day of \_\_\_\_\_, 2024, that the 2024-2025 Budget Revision for the Morgantown Capital Escrow Fund Budget (Revision 05) hereto attached is approved.*

\_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*City Clerk*



P: 304-284-7412  
Morgantownwv.gov  
389 Spruce St.  
Morgantown, WV 26505

# **Proposed Budget Revision Fiscal Year Ended June 30, 2025**

## **Capital Escrow Fund – Revision #5**

**This Budget Revision includes:**

- 1. City Maintenance Garage Improvements Project**
- 2. Airport Marketing**
- 3. MET Theatre Lighting Project**

# 1. City Garage Improvements Project

## Overview:

The City Maintenance Garage is undergoing significant upgrades and renovations to enhance efficiency and create a better working environment. Key improvements include a 43' x 18' office addition, upgraded storm water management systems, and numerous electrical, mechanical, and plumbing enhancements. Additionally, a new HVAC system will be installed to improve energy usage, along with a new roof and siding.

The project bid was accepted on November 14, 2024, for a total of \$3,249,277.00, subject to unit prices and alternates. The project is funded through the City's Capital Escrow Fund and the ARPA Fund.

## Budget Revisions:

The following budget revisions are proposed:

- **Increase in Budgeted Revenues**
  - Increase in Budgeted Miscellaneous Revenues by \$96,000 to reflect the funds received from the Morgantown Utility Board in December 2024. These funds are related to the Memorandum of Understanding for stormwater mitigation work carried out by the City in connection with the construction project for public improvements at Hazel Ruby McQuain Riverfront Park.
  - Increase in Prior Year Fund Balance Carryover of \$235,422.15 to be carried over to the current fiscal year.
  - Increase in Budgeted Contributions from the Building Commission Fund in the amount of \$1,287,733.03 from the remaining unspent proceeds of the Morgantown Building Commission's Lease Revenue Refunding Bonds Series 2022-A (Multiple Facilities Improvements Projects).

- **Decrease in Budgeted Expenditures:**
  - \$310,675.82 utilized from the Capital Escrow Fund’s Contingency budget.
- **Increase in Budgeted Expenditures:**
  - Increase in Budgeted Expenditures for Capital Outlay – Building Renovations in the amount of \$1,694,408.85 to account for the Capital Escrow Fund’s allocation of project expenditures.

These revisions ensure that the City Maintenance Garage Project is fully funded and can proceed without financial hindrance. The upgrades will significantly improve the facility's functionality and efficiency, benefiting both staff and the community.

## 2. Municipal Airport Marketing Program

### Overview:

The Municipal Airport is seeking \$18,000 from the Capital Escrow Fund to continue its marketing efforts, which began in October 2024, to promote the new air service in Morgantown. SkyWest Airlines initially contributed \$20,000 in October to launch this marketing campaign. Continued marketing is essential to grow the service and achieve the 10,000 enplanements required to secure \$1 million in FAA entitlement funding. This funding will be crucial for the runway extension project and future capital needs.

### Budget Revisions:

The following budget revisions are proposed:

- **Increase in Budgeted Revenues:**
  - **Additional Interest Income:**

By optimizing our investment strategy, we have generated additional interest income. The available cash in the Capital Escrow Fund

Checking account was invested in a Money Market account with United Bank.

This strategic move has yielded higher interest rates compared to the regular checking account, while maintaining the security of the principal, in full compliance with the City's short-term investment policy.

Since opening the account in September 2024, this strategy has provided an additional \$68,000 in interest income. Of this amount, \$50,000 was already utilized for the Airport Terminal Building Capital Repair, included in the Capital Escrow FY25 Budget Revision #1. The remaining \$18,000 can now be allocated to the Airport's marketing campaign. This approach ensures fiscal responsibility and maximizes the return on our available funds.

- **Increase in Budgeted Expenditures:**

- An increase of \$18,000 in budgeted expenditures is proposed for the Morgantown Municipal Airport's marketing campaign.

These revisions will ensure that the marketing efforts for the new air service continue, helping the airport reach its enplanement goals and secure vital FAA funding.

### 3. MET Theatre Lighting Capital Project

The MET Theatre is undergoing a significant lighting upgrade to enhance its capabilities and ensure a better experience for all patrons. The project involves the removal and proper disposal of outdated electrical equipment and the installation of a new Electronic Theater Controls (ETC) lighting control system. This includes new wiring, conduit, panels, button stations, dimmers, and lighting instruments.

#### **Budget Revisions:**

The following budget revisions are proposed:

- **Increase in Budgeted Revenues:**

- **Cultural Facilities and Capital Resources (CFCR) Grant:** The City received a \$50,000 grant from the WV Division of Culture and History in November 2024. This grant supports the acquisition, construction, and renovation of arts venues, accessibility improvements, and the purchase of durable equipment.
- **Hazel Ruby McQuain Charitable Trust Grant:** An additional \$50,000 grant was received in December 2024 to be used specifically for the MET Theatre's lighting project.

- **Increase in Budgeted Expenditures:**

- An increase of \$100,000 in budgeted expenditures is proposed for the MET Theatre's lighting capital project.

The support from the CFCR Grant and the Hazel Ruby McQuain Charitable Trust will go a long way in enhancing the venue's functionality and audience experience. This upgrade will not only improve the theatre's technical capabilities but also contribute to the cultural vitality of Morgantown.



**City of Morgantown**  
**Capital Escrow Fund Budget Revision**  
**City Maintenance Garage Project**

Total Bid Awarded	\$ 3,249,277.00
Less: Amount included in ARPA's Budget for this Project	\$ (554,868.15)
Less: MUB Reimbursement	\$ (96,000.00)
Less: PSB Building Budget in Capital Escrow Fund	\$ (1,000,000.00)
Less: Remaining Lease Rev Bond (Building Commission)	\$ (1,287,733.03)
<b>= Amount of Contingency Budget Utilized for this Project</b>	<b><u><u>\$ 310,675.82</u></u></b>





# Instructions for Budget Revision File

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

## TOP SECTION

### Person to Contact Regarding Budget Revision

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

### Government Entity -

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

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### Control Number FY

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

### FUND

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

### REV. NO.

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

### PG. OF NO.

Number of pages to this revision.

### Government Type

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

# Instructions for Budget Revision File

## REVENUES: (net each account category)

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### Column 6- Revised Amount

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

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# Instructions for Budget Revision File

## EXPENDITURES: (net each account category)

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