

**MORGANTOWN LAND REUSE AND PRESERVATION AGENCY**

**SPECIAL MEETING MINUTES**

**June 4, 2019 ♦ 4 p.m.**

**Public Safety Building ♦ Conference Room**

**DIRECTORS PRESENT:** David Satterfield, Jessica McDonald, Patrick Kirby, Laura Rye, Brent Bailey, and Tim Stranko

**DIRECTORS ABSENT:** Michael Mills

**STAFF PRESENT:** City Attorney Ryan Simonton and Director of Development Services Chris Fletcher

**I. CALL TO ORDER AND ROLL CALL**

**II. PROOF OF NOTICE OF MEETING OR WAIVER OF NOTICE**

**III. PUBLIC PORTION – None.**

**XI. NEW BUSINESS**

**A. Bylaws**

Simonton presented the draft by-laws providing explanations of the revisions associated with board member comments. Following a discussion and clarification, Stranko moved to adopt the by-laws as presented; seconded by McDonald. The motion passed unanimously.

**B. Consideration of acquisition or development of property in the downtown area of the City of Morgantown.**

Stranko moved to adjourn to an executive session to discuss matters relating to the acquisition or development of real estate within the downtown; seconded by Kirby.

Rye asked for clarification as to whether she might have a conflict of interest given her employment with MVB Bank and whether she should recuse herself over an abundance of caution. Simonton advised her that her participation in present Board discussions in executive session or deliberations and decisions in open session concerning the acquisition or development of property do not appear to present a conflict of interest by virtue of her employment with MVB Bank. A conflict would appear to be triggered if MVB Bank was directly involved. Examples given would be if her employer was involved in financing, bond purchase, landowner, land purchaser, etc. Ryan advised that because matters that might trigger a conflict are not currently present, Rye would not be required to recuse herself. Rye assented with Simonton's recommendation and opted not to recuse herself.

Stranko's motion to adjourn to executive session carried unanimously.

The Board returned to open session.

Stranko moved to authorize execution of the real estate purchase agreement concerning 430 Spruce Street, Morgantown, West Virginia under the terms presented to the Board. The motion was seconded by Kirby.

Satterfield asked for confirmation that City funds were available for the escrow deposit and for immediate use and delivery of items included in the terms of the purchase agreement. Simonton confirmed said funds are available and will be transferred accordingly.

Stanko's motion to authorize execution of the purchase agreement passed unanimously.

**XII. ADJOURNMENT** – Rye moved to adjourn the meeting; seconded by Bailey. The meeting was adjourned by unanimous consent at 5:48 p.m.

MINUTES APPROVED:

July 25, 2019

BOARD SECRETARY:

  
\_\_\_\_\_  
Patrick Kirby, Secretary

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of May, 2019, by and between **MICHAEL A. VECCHIO, SR., CHARLES L. BADGER, AND JANET S. SAL.**, individuals (collectively "Seller"), and **MORGANTOWN LAND REUSE AND PRESERVATION AGENCY**, a public corporation established by The City of Morgantown, West Virginia ("Buyer").

### WITNESSETH:

It is hereby agreed as follows:

1. Purchase and Sale. Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase from Seller, for the Purchase Price and upon the terms and conditions specified herein all of that certain lot or parcel of real estate which is located, situate and being in Morgantown District, Monongalia County, West Virginia, containing 0.68 acres, more or less, and identified as Map 26, Parcels 254, 255, 257, 257.1, 258, and 261, and Map 29, Parcel 51, all as more particularly described in that certain deed dated \_\_\_\_\_, from \_\_\_\_\_, Grantors, to \_\_\_\_\_, Purchasers, and recorded in the office of the Clerk of Monongalia County at Deed Book 1578, page 429, and Estate Book 40, page 538, and attached hereto as Exhibit A and incorporated herein by this reference, together with all buildings, structures, fixtures, and other improvements thereon and all appurtenances pertaining thereto, and including all office furniture and appliances listed on **Schedule A** hereto (the "Property").

2. Purchase Price. The total purchase price (the "Purchase Price") for the Property shall be One Million Two Hundred Sixty-Three Thousand Five Hundred and 00/100 Dollars (\$1,263,500.00), payable in cash or other immediately available funds as follows:

(i) Contemporaneously with the execution and delivery of this Agreement, Buyer shall pay Fifteen Thousand and 00/100 Dollars (\$15,000.00) (the "Escrow Deposit") to KLM Properties, Inc. ("Escrow Agent"), to be held and disbursed by Escrow Agent in accordance with the terms of this Agreement; and

(ii) Contemporaneously with the execution and delivery of this Agreement Buyer shall pay Five Thousand and 00/100 Dollars (\$5,000.00) to Seller for immediate use and delivery of the items listed on **Schedule A** in connection with the early occupancy of the Property in accordance with the terms of this Agreement; and

(iii). Upon the closing, settlement, and consummation of the transaction contemplated by this Agreement (the "Closing"), Buyer shall pay Seller the balance of the Purchase Price, less the Escrow Deposit, in cash or other immediately available funds.

3. Free of Encumbrances. Seller hereby warrants, represents and covenants that Seller is and will be at the time of Closing, the lawful owner of full marketable fee simple title to the Property and that the Property will be conveyed to Buyer at the Closing free and clear of any and all liens and leases, but subject to all easements, rights of way, building restriction lines, covenants, conditions and restrictions of record.

4. Closing. The Closing shall occur within thirty (30) calendar days of the expiration of the Inspection Period (defined below) (the "Closing Date"). At the Closing, Seller shall deliver to Buyer the following items, which items shall be in form and substance reasonably satisfactory to Buyer: (i) a properly executed and acknowledged general warranty deed in recordable form conveying marketable fee simple title to the Property to Buyer subject to all easements, rights of way, building restriction lines, covenants, conditions and restrictions of record; (ii) an owner's affidavit as to mechanic's liens in ALTA standard form or in a form suitable to closing agent; (iii) a certified copy of the resolutions of the members of Seller authorizing the transactions contemplated by this Contract and the execution and delivery of all documents necessary or convenient to carry out said transactions, if necessary, and (iv) such other documents as are required to be delivered by Seller to Buyer on or before the Closing pursuant to the terms of this Agreement or as are reasonably necessary or appropriate to the consummation of this transaction.

5. Closing Costs.

(i) Seller shall pay for the preparation of the deed of conveyance and any other documents necessary to convey the Property to Buyer, the excise tax on the privilege of transferring real property, preparation of and cost for obtaining and recording releases or termination statements for any liens encumbering the Property, and Seller's legal fees.

(ii) Buyer shall pay for examination of title and premiums for owner's and mortgagee title insurance policies, environmental inspection reports, soil tests, structural inspections, due diligence and feasibility inspections and studies, and any other inspections or tests Buyer desires, the cost of recording all documents, except for releases of liens, and Buyer's legal fees.

6. Inspection Period. Commencing on the execution date of this Agreement, Buyer shall have sixty (60) days (the "Inspection Period") to perform due diligence related to: (a) the sufficiency of Seller's title to the Property; (b) the feasibility of the Property for Buyer's intended use of the Property; and (c) inspection and investigation related to the assurances and contingencies stated herein. Buyer shall have the right, at Buyer's expense, to have inspection(s) of the Property performed for soundness of structural, physical, and mechanical components; environmental issues and remediation, including, but not limited to, a Phase I environmental assessment and such additional assessments or investigations as are indicated by such assessment; (c) geological issues; and (d) such other purposes as determined by Buyer. Written notice of any findings will be reported to Seller on or before sixty (60) days from execution of this Agreement. If any defects are discovered and repairs or remediation are required as a result of such inspection(s), Buyer shall have the option of notifying Seller in writing on or before the date set forth above in this paragraph and providing Seller with a copy of the complete written report of the inspection, that: (1) Buyer is terminating this Agreement because Buyer is not satisfied with the results of such inspection(s) and indicating to Seller in writing that the findings were not satisfactory; or (2) Buyer requires certain unsatisfactory findings identified in such report(s) to be repaired or remediated by Seller, and Seller shall have the option of: (a) making such repairs at Seller's expense by the closing date; or (b) negotiating the repairs to be made by Seller; or (c) refusing to make such repairs, permitting Buyer to terminate this Agreement or accept the Property in its present condition. Seller shall respond in writing to Buyer within ten (10) days of notice indicating which option is selected. If option (b) is selected, the parties shall enter a written agreement for repairs or remediation within ten (10) days of selection or either party may terminate

the Agreement. Upon termination pursuant to this Paragraph, all escrow deposit shall be returned to Buyer.

7. Title Review.

(i) Buyer shall have until the expiration of the Inspection Period to examine title to the Property and obtain, examine and review a commitment from a title insurance company to issue an owner's title insurance policy, in the amount of the Purchase Price, showing title to the Property as being good, record, and marketable and indefeasibly vested in Seller, subject only to permitted title exceptions (the "Commitment").

(ii) In the event Buyer fails to notify Seller of any adverse title exceptions prior to the expiration of the Inspection Period, Buyer shall be conclusively deemed to have approved the title to the Property as set forth in the Commitment, any and all exceptions, items and matters referenced in the Commitment shall be conclusively deemed to be Permitted Title Exceptions.

(iii) In the event Buyer notifies Seller of an adverse title exception prior to the expiration of the Inspection Period, Seller shall have twenty (20) days to cure any such adverse title exception. In the event Seller notifies Buyer that Seller is unable to cure, or declines to cure any such adverse title exception, Buyer shall have five (5) days from the receipt of said notice to notify Seller of its intent to: (a) proceed with the transaction contemplated hereby without a reduction in Purchase Price; or (b) terminate this Agreement. Upon such a termination, the Escrow Agent shall refund the Escrow Deposit to Buyer, subject to Buyer's fulfillment of its obligations to: (a) return to Seller all due diligence and feasibility reports; and (b) correct and repair any and all damage to the Property caused by Buyer's due diligence and feasibility inspections and studies.

(iv) By the written mutual consent of the Parties, the Inspection Period may be extended to cure any adverse title exceptions raised under this Section.

8. Feasibility Review.

(i) Buyer shall have until the expiration of the Inspection Period to examine title to conduct due diligence and feasibility inspections and studies of the Property related to the availability of requisite licenses, permits, and other approvals necessary to Buyer's intended use of the Property.

(ii) During the Inspection Period, Buyer may procure licenses, permits, and other approvals reasonable and necessary to Buyer's intended use of the Property, provided such licenses, permits, and other approvals shall not take or have any effect until Buyer has paid Seller the Purchase Price, in full.

(iii) In the event Buyer fails to notify Seller, prior to the expiration of the Inspection Period, of any objections to the condition of the Property which shall conclusively, materially, and adversely inhibit, limit, restrict, and/or prohibit Buyer's intended use of the Property, Buyer shall be deemed to have irrevocably and conclusively accepted, approved, and consented to all results of any and all due diligence and feasibility inspections and studies of the Property, and Buyer shall be deemed to have waived any and all objections to the condition of the

Property and any right to terminate relating to, premised on, and/or based upon the results of Buyer's due diligence and feasibility inspections and studies of the Property.

(iv) In the event Buyer notifies Seller, prior to the expiration of the Inspection Period, that the results of Buyer's due diligence and feasibility inspections and studies conclusively show or demonstrate that the Buyer's use, enjoyment, and/or development of the Property shall be materially and adversely inhibited, limited, restricted, and/or prohibited, then the Parties shall have twenty (20) business days subsequent to Seller's receipt of Buyer's notice within which to agree upon a resolution to the objection(s). In the event that the Parties shall not agree upon a resolution to the objection(s) within such twenty (20) business day period, then either Party shall have the right to terminate by written notice to the other Party, which notice shall be given within two (2) business days after the expiration of such twenty (20) business day period. If Buyer gives Seller notice of Buyer's election to terminate, Seller shall have the right to cure, remedy, and/or correct the objectionable matter(s) within twenty (20) business days following Seller's receipt of Buyer's notice. In the event that Seller shall fail to cure, remedy, and/or correct the objectionable matter(s) for any reason by the expiration of the Inspection Period, as postponed or extended, then Buyer, as Buyer's sole and exclusive right and remedy, shall have the right to: (a) proceed with the transaction contemplated hereby without a reduction in Purchase Price; or (b) terminate this Agreement. Upon such a termination, the Escrow Agent shall refund the Escrow Deposit to Buyer, subject to Buyer's fulfillment of its obligations to: (a) return to Seller all due diligence and feasibility reports; and (b) correct and repair any and all damage to the Property caused by Buyer's due diligence and feasibility inspections and studies.

(v) By the written mutual consent of the Parties, the Inspection Period may be extended to cure any feasibility objections raised under this Section.

9. Due Diligence and Feasibility Reports. In the event Buyer terminates this Agreement prior to the expiration of the Inspection Period, as postponed or extended, Buyer shall deliver to Seller, within three (3) calendar days of the exercise of its right to terminate, photocopies of any and all reports and other instruments and documents obtained, procured, and/or in Buyer's possession in relation to Buyer's due diligence and feasibility inspections and studies of the Property. In the event that the Escrow Deposit shall otherwise be required to be returned, refunded, released, distributed, or disbursed to Buyer under, in accordance with, or pursuant to this Agreement, the Escrow Deposit shall be held and retained by Escrow Agent until such delivery obligation shall be met, fulfilled, and satisfied by Buyer.

10. Escrow Agent.

(i) Until returned, refunded, released, distributed, disbursed, and/or applied as set forth and provided for in this Agreement, Escrow Agent shall hold, maintain, and retain the Escrow Deposit in Escrow Agent's general escrow account, where the Escrow Deposit shall not accrue interest and shall be commingled with other escrow funds held by Escrow Agent. Escrow Agent shall only return, refund, release, distribute, disburse, and/or apply the Escrow Deposit under, in accordance with, and pursuant to the provisions of this Agreement.

(ii) The Parties shall, jointly and severally, to the extent permitted by law, protect, defend, indemnify, and hold Escrow Agent harmless of, from, against, and in relation to any and all liabilities and losses incurred, sustained, suffered, or expended by Escrow Agent accruing from, concerning, pertaining to, in relation to, in connection with, or resulting from

Escrow Agent's duties and obligations under, in accordance with, and/or pursuant to this Agreement, except in the event of Escrow Agent's gross negligence or fraud. Escrow Agent shall not be liable to the Parties in any way, manner, or character in connection with Escrow Agent's duties and obligations under, in accordance with, and/or pursuant to this Agreement except in the event of Escrow Agent's gross negligence or fraud.

11. As-Is Purchase and Sale. Buyer shall accept the Property in its current and present condition, AS-IS, with all defects and faults and without warranty or representation except as is otherwise set forth herein.

12. Possession.

(i) Buyer shall be entitled to exclusive possession of the Property at Closing.

(ii) Upon execution and delivery of this Agreement, Buyer shall be entitled to immediate possession and use of the Property pending closing upon the following terms:

- (A) Seller may use one office on the main level of the Property as storage for furniture until Closing. The office selected shall not be a conference room space.
- (B) Seller may enter the Property upon reasonable notice to Buyer and shall make entry in a manner that does not interfere with Buyer's use of the Property.
- (C) Buyer shall be entitled to make alterations and modifications to the Property as follows: install, place, replace, upgrade, maintain, and repair doors; locks; utilities including without limitation fiber optic lines and/or cables; telephone and internet facilities and systems; closed circuit and/or security cameras; and other structural alterations necessary or helpful to installation and maintenance of such alterations or modifications.
- (D) The Parties agree that the occupancy of the Property upon execution and delivery of this Agreement constitutes use equivalent to a lease, that unless otherwise specified herein that Parties shall have the legal obligations of landlord and tenant with respect to the Property during the early occupancy period prior to Closing, and that the reasonable value of consideration for the use of the property pursuant to a lease is equivalent to \$13.50 per square foot per month. Should Closing not occur, Buyer agrees to pay a prorated amount equivalent to the quoted rate based on the number of days the Property was occupied as leased premises. In such event, title to the items listed in **Schedule A** shall return to Seller and Buyer shall be entitled to offset against

its obligation for lease payments the total amount paid for the items on **Schedule A**.

13. Adjustments. Ad valorem real estate and personal property taxes on the Property for the current calendar year and any other charges related to the Property shall be paid and prorated at the Closing, effective as of the Closing Date.

14. Commissions. Buyer and Seller represent that, with the exception of Black Diamond Realty, LLC and KLM Properties, Inc., they have dealt with no real estate broker or agent in connection with this transaction, and that there is no such broker or agent involved in this transaction who would be entitled to any commission or fee. Excluding any fee charged by Black Diamond Realty, LLC or KLM Properties, Inc., Buyer and Seller hereby agree, to the extent permitted by law, to indemnify and hold each other harmless from any and all claims for brokerage commissions or fees due any broker or agent allegedly representing the Buyer or Seller or claiming to be entitled to any such commission or fee arising out of this transaction.

15. Buyer's Default. If Buyer defaults in performing any of Buyer's obligations under this Agreement for any reason other than Seller's default or a permitted termination hereof by Buyer, then Seller shall be entitled to retain the Escrow Deposit as its sole remedy for Buyer's default.

16. Seller's Default. If Seller defaults in performing any of Seller's obligations under this Agreement for any reason other than Buyer's default or a permitted termination hereof, then Buyer may terminate this Agreement and receive a full and immediate refund of the Escrow Deposit, subject to Buyer's fulfillment of its obligations to: (a) return to Seller all due diligence and feasibility reports; and (b) correct and repair any and all damage to the Property caused by Buyer's due diligence and feasibility inspections and studies.

17. Entire Agreement/Governing Law. This Agreement, together with all Exhibits hereto, constitutes the entire agreement of the parties hereto and cannot be amended or varied without the express written agreement of the parties. This Agreement shall be governed and construed according to the laws of the State of West Virginia.

18. Successors. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns wherever the context so requires or admits.

19. Notices. All notices or other communications required or permitted under, in accordance with, or pursuant to this Agreement shall be in writing and shall be either (a) personally delivered to Buyer or Seller, as applicable, or (b) sent by certified mail, postage prepaid, return receipt requested, the following addresses:

If to Seller, to:

Attention:

If to Buyer, to:

The City of Morgantown  
Attention: City Manager



389 Spruce Street  
Morgantown, WV 26505

20. Time of Essence. Time is of the essence to the performance hereof.

21. Entry for Inspection. The Buyer is authorized, upon two (2) days' notice to Seller, to enter upon the Property, at Buyer's sole and exclusive risk, to conduct due diligence and feasibility inspections and studies of the Property. Buyer shall be responsible and obligated for the repair of any damage and any reasonably advisable restoration of the Property caused or necessary as a result of Buyer's due diligence and feasibility inspections and studies. In the event that the Escrow Deposit shall otherwise be required to be returned, refunded, released, distributed, or disbursed to Buyer under, in accordance with, or pursuant to this Agreement, the Escrow Deposit shall be held and retained by Escrow Agent until such repair and restoration obligations shall be met, fulfilled, and satisfied by Buyer. Buyer shall, to the extent permitted by law, protect, defend, indemnify, and hold Seller harmless of, from, and against any and all liabilities and losses, arising out of any entry by Buyer or its representatives, agents, employees, contractors, engineers, surveyors, and appraisers. The foregoing indemnity obligation shall survive the Closing or any termination of this Agreement and the rights and obligations of the Parties under, in accordance with, and pursuant to this Agreement.

22. Risk of Loss/Eminent Domain. Seller shall have all risk of loss, damage or destruction of the Property due to fire or other casualty until Closing. In the event that, prior to Closing, the Property is taken by eminent domain, in whole or in part, or should such proceedings be initiated, prior to Closing, Seller, in its sole discretion, shall have the option of enforcing the obligations hereunder or canceling this Agreement. If Seller elects to cancel this Agreement, Buyer shall receive a full refund of the Escrow Deposit, subject to Buyer's fulfillment of its obligations to: (i) return to Seller all due diligence and feasibility reports; and (ii) correct and repair any and all damage to the Property caused by Buyer's due diligence and feasibility inspections and studies, and each of the parties shall be relieved of all further obligations or liabilities hereunder.

23. Extension of Certain Dates. If the final day of any time period specified herein falls upon a Saturday, Sunday or legal holiday under the laws of the State or the United States of America, then, in such event, such date or period of time shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday under the laws of the State or the United States of America.

24. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. Survival. Each and every representation, warranty and covenant of Buyer and Seller set forth in this Agreement, to the extent the same has not been nor cannot be fully satisfied or performed at or before the date of Closing, shall survive Closing and continue in full force and effect, and bind Buyer or Seller, as applicable.

26. Assignment. At any time prior to Closing, Buyer may assign all its rights, title and interest in this Agreement. Seller shall not have the right to assign this Agreement.

27. Rule of Construction. The parties hereto acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

28. Headings. The captions or headings used in this Agreement are for convenience of reference only and shall not be considered in interpreting this Agreement.

29. Representations and Warranties. Seller hereby represents and warrants as follows, which representations and warranties shall be true and correct as of the date hereof and as of the Closing and the truth and correctness of which shall be a conditions precedent to Buyer's obligations to close the transaction contemplated by this Agreement:

(i) There are no existing or pending actions, suits or proceedings with respect to or affecting any aspect of any of the Property nor have any such actions, suits or proceedings been threatened or asserted.

(ii) Seller has no knowledge of any pending or threatened condemnation, or similar proceeding affecting the Property or any portion thereof, nor has Seller knowledge that any such action is presently contemplated.

(iii) Seller has no knowledge of any fact, action or condition which would result in the termination of full, free and adequate access to and from the Property and the public highways and roads in the vicinity of the Property.

(iv) Rent, if any, will be prorated as of the date of closing and any security deposits will be transferred to the Buyer from the Seller at closing.

(v) Seller has no knowledge that the Property has previously been used as a landfill or as a dump for garbage or refuse.

(vi) The conveyance of the Property will not constitute a violation of any subdivision or other governmental ordinance.

(vii) To the best of the Seller's knowledge, there are not now, nor have there ever been, any toxic or hazardous wastes, substances or related materials ("Hazardous Materials") used, generated, stored, treated or disposed of on the Property or on adjacent property in such manner or quantity so as to constitute a violation under the statutes referred to below or other applicable statutes. Hazardous Materials shall include, but shall not be limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Materials Act., 49 U.S.C. Sec. 1802, the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 901 et seq., and those substances similarly defined in the local and state laws of the State of West Virginia and the regulations adopted and publications promulgated pursuant to said laws.

(viii) Seller is duly organized, validly existing and in good standing under the laws of the State of West Virginia and has all requisite power and authority to execute and deliver this Agreement and to carry out the transactions contemplated thereby.

30. Financing Contingency. Buyer may terminate this Agreement prior to Closing if Buyer, in Buyer's sole discretion, has not obtained a commitment of suitable financing from a source available to Buyer, acceptable to Buyer in Buyer's sole discretion. Such termination shall create no further liability or obligation by either party to the other pursuant to this Agreement and the escrow deposit shall be refunded to Buyer.

31. Appraisal Contingency. This Agreement is contingent upon Buyer obtaining a current appraisal of the Property indicating an appraised value equal to or greater than the agreed upon Purchase Price herein and if the appraised market value of the Property is not equal to or greater than the agreed upon Purchase Price, Buyer agrees to provide a copy of such appraisal to Seller, and this Agreement is then open for renegotiation. Buyer does not have to purchase; Seller does not have to sell. If an agreement is not reached after five (5) days of renegotiation, either party may choose to terminate this Agreement. Upon receipt of such written termination notice, the escrow deposit shall be refunded to Buyer.

32. Mold Inspection Contingency. Buyer shall have the right, at Buyer's expense, to have the Property inspected by a licensed mold inspector. Test and results must be provided to the Seller within sixty (60) days of the execution of this Agreement or the right to have such inspection performed shall be waived. If mold is found on the Property, the Seller shall have the option of: (a) taking remedial action to correct the problem, subject to Buyer's discretionary right to agree to accept this remedial action or elect to terminate this Agreement and have all earnest money deposits returned; or (b) Negotiate remedial action and expenses with Buyer, subject to Buyer's discretionary right to agree to provide for remedial action or elect to terminate this Agreement and have all escrow deposit returned.

33. Radon Inspection Contingency. Buyer shall have the right, at Buyer's expense, to have the Property subjected to a Radon Test. Test results of the air within envelope space when closed to outside environment (normal entry & exit) must be below the EPA Action Level of 4.0 picoCuries per liter. Test and results must be provided to the Seller within sixty (60) days of the execution of this Agreement or the right to have such inspection performed shall be waived. If test results indicate levels equal to or exceeding the EPA Action Level, Seller shall have the option of: (a) taking remedial action to reduce levels below the EPA Action Level, subject to Buyer's discretionary right to agree to accept this remedial action or elect to terminate this Agreement and have all earnest money deposits returned; or (b) negotiate remedial action and expenses with Buyer, subject to Buyer's discretionary right to agree to accept this remedial action or elect to terminate this Agreement and have all escrow deposit returned.

34. Wood destroying insect Inspection Contingency. Property is to be conveyed free and clear of all wood destroying organisms. Prior to closing, the Buyer may procure at the Buyer's expense a wood destroying insect infestation report from a licensed exterminating company. If evidence of infestation and/or damage caused by such infestation is discovered, the Buyer may choose to terminate this Agreement and have all earnest money deposits returned, or request that the Seller correct the same at Seller's expense. If Seller does not correct the problem upon request, Buyer may terminate this Agreement and have all escrow deposit returned.

35. Survey Contingency. Buyer's obligation to purchase under this Agreement is contingent upon the Buyer, in Buyer's discretion, obtaining a survey of the Property within sixty (60) days of the date of execution of this Agreement to determine (1) that there are no unsatisfactory right-of-way or encroachments affecting the Property or its anticipated use; (2) the size of the Property is not materially different from that which has been represented; and (3) that the Property boundaries and corners are in the locations represented to Buyer prior to entry into this Agreement. If a discrepancy is found, Seller shall have the right to cure the defect. If Seller is unable or unwilling to cure the defect within thirty (30) days of notice thereof or such other time as the parties may agree, this Agreement may be terminated by Buyer and all escrow deposit shall be returned.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date first herein above appearing.

**SELLERS:**

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

**BUYER:**

Morgantown Land Reuse and Preservation Agency

By:  \_\_\_\_\_

David Satterfield

Its: Chair

And

By:  \_\_\_\_\_

Laura Rye

Its: Treasurer

EXHIBIT A  
TO  
REAL ESTATE PURCHASE AGREEMENT

Legal Description of the Property