

AN ORDINANCE AMENDING A FEBRUARY 22, 2012, REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY (MCDA) AS THE SAME APPLIES TO THE CITY OF MORGANTOWN TRANSFERRING 95.7 ACRES AT THE MORGANTOWN MUNICIPAL AIRPORT TO THE MCDA, AND THE MCDA TRANSFERRING 13 ACRES, MORE OR LESS, LOCATED ALONG HARTMAN RUN ROAD, TO THE CITY OF MORGANTOWN.

The City of Morgantown hereby ordains that the Amended Real Estate Purchase Agreement attached hereto is approved and the City Manager is authorized to execute the same by and on behalf of the City of Morgantown..

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AMENDED REAL ESTATE PURCHASE AGREEMENT

THIS AMENDED CONTRACT OF SALE ("Agreement") made and entered into this ____ day of April, 2013, (the "Effective Date") by and between CITY OF MORGANTOWN, Morgantown, West Virginia, a Municipal Corporation, party of the first part, ("City"); and the MONONGALIA COUNTY DEVELOPMENT AUTHORITY, a West Virginia Public Corporation, party of the second part, ("MCDA").

WHEREAS, the City and the MCDA entered into a Contract of Sale with an effective date of February 22, 2012; and

WHEREAS, it is necessary to amend provisions of the February 22, 2012 Contract of Sale.

WHEREFORE, the City and the MCDA agree as follows:

WITNESSETH: That for and in consideration of the sum of TEN and No/100 Dollars (\$10.00), cash in hand paid, the receipt of which is hereby acknowledged, the City agrees to sell, and the MCDA agrees to buy, all those certain parcels of real estate containing in total 95.7 acres, more or less, located in Union District, Monongalia County, West Virginia, more particularly set forth in Exhibit A attached to this Agreement (referred to in this agreement as the "Business Park Property"), and as shown on a plat prepared by Alpha & Associates, Inc., a copy of which has been provided to MCDA.

FOLLOWING TERMS AND CONDITIONS:

(1) The total consideration for the Property shall be the sum of Seven Hundred Eighty Five Thousand Dollars (\$ 785,000.00), payable as follows:

- (a) The Transfer of approximately 13 acres owned by the MCDA and located on Hartman Run Road in Morgantown, WV ("the Hartman Run Road Property") and more fully described in

Exhibit B, attached to this Agreement and having a fair market value of Seven Hundred Fifty Thousand Dollars (\$750,000.00)

- (b) The balance of the purchase price, Thirty Five Thousand Dollars (\$35,000.00) in cash at the time of closing.

(2) The values of the Business Park Property and the Hartman Run Road Property set forth above have been established by certified fair market value appraisals and agreed to by the City and the MCDA.

(3) The sale of Property shall be consummated within sixty (60) days of the date the City obtains all necessary approvals, including but not limited to all approvals of the United States Federal Aviation Administration ("FAA") relating to the land release for the Business Park property being transferred herein. The Closing shall be held at a time, place and in a manner to be mutually agreed upon by the parties.

(4) The City and the MCDA agree to work together in the design, development, construction and obtaining financing for Phase II of the Access Road.

(5) At the closing, the MCDA shall execute a General Warranty Deed conveying good and marketable title to the City, of the Hartman Run Road Property free and clear of any and all liens and encumbrances of any kind, character or nature. There shall be expressly reserved and excepted from this conveyance all mineral, oil and gas rights owned by the MCDA. Provided however, the reservation and exception of the mineral, oil and gas rights shall not include the right of entry or use of the surface for any reason whatsoever without the express written consent of the City. Such Consent may be granted or denied in the sole and absolute discretion of the City. The deed shall be prepared at the expense of the MCDA. The MCDA shall transfer and turn over possession of the property to City at the time of Closing, unless otherwise agreed to in writing, executed by the parties.

(6) At the closing, the City shall execute a General Warranty Deed conveying good and marketable title to the MCDA, the Business Park Property free and clear of any and all liens and encumbrances of any kind, character or nature. There shall be expressly reserved and excepted from this conveyance all mineral, oil and gas rights owned by the City. Provided however, the reservation and exception of the mineral, oil and gas rights shall not include the right of entry or use of the surface for any reason whatsoever without the express written consent of the MCDA. The deed shall be prepared at the expense of the City. The City shall transfer and turn over possession of the property to the MCDA at the time of Closing, unless otherwise agreed to in writing, executed by the parties.

(7) The MCDA shall cause the title to the Business Park Property, and the City shall cause title to the Hartman Run Road Property, to be examined by an attorney selected by them. In the event the examination discloses any apparent objections to the title to either Property, the MCDA or the City as the case may be, shall notify the other party in writing prior to the closing of this transaction. If any objections to title shall appear to be valid, the MCDA and the City as the case may be, shall attempt to remove the same. In the event the MCDA or the City as the case may be, does not remove the objections to title once notified, the MCDA or the City as the case may be, may:

- (a) Correct the defects in the title and deduct or add, as the case may be, the costs and expenses of correcting those defects from the purchase price of the Property; and/or
- (b) Institute an action on behalf of the City or the MCDA as the case may be, in the Circuit Court of Monongalia County West Virginia to quiet title and remove the defects.

(8) MCDA and the City as the case may be shall, during the term of this Agreement and prior to closing, be permitted to enter the Property for purposes of conducting inspections, surveys, examinations, soil sampling, core drillings and such other due diligence, as is reasonably necessary and required by the respective

parties. MCDA and the City as the case may, be shall notify the other party in advance of any activities to be conducted on the respective properties.

(9) If either party fails or refuses to perform their obligations hereunder, including the furnishing of good title as herein defined and transfer of possession, the other party may at their option;

(a) Rescind this Agreement and recover all deposits and other amounts paid by them hereunder, or

(b) Enforce this Agreement by appropriate action, including, but not limited to, an action for specific performance. The parties shall give the other party written notice of election with respect to exercise of these options.

(10) It is agreed that the parties will, during the period between the Effective Date and the delivery of possession, maintain their respective Properties in the same condition as they are now.

(11) The City shall, at no cost to the MCDA, provide any and all reasonably necessary rights-of-way and easements to get utility services to the Business Park Property. The City and the MCDA agree to work together to get the utilities and infrastructure to the Business Park Property. The City and MCDA shall work together to explore any and all available funding, grants and revenue sources to provide for construction of Phase II of the Access Road, and for the extension of utilities and infrastructure to the Business Park Property.

(12) MCDA and the City understand and agree that upon transfer, Business Park property transferred shall have deed restrictions similar to the following:

- Federal Aviation Regulation (FAR) Part 77 (recodified as 14 Code of Federal Regulations (CFR) Part 77) surfaces must be adhered to relating to any building, structure, poles, trees, or other objects on the property. The City will retain a right of entry onto the property conveyed to cut, remove, or lower any

object, natural or otherwise, of height in excess of 14 CFR Part 77 surfaces relating to the airport. The public right shall include the right to require the marking or lighting as obstructions to air navigation, any and all objects that may, at any time, project or extend above said surfaces.

- A notice consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1) must be filed prior to constructing any facility, structure, or other item on the property.
- The property shall not be used to create electrical interference with communication between the installation upon the airport and aircraft, make it difficult for fliers to distinguish between airport, or endanger the landing, taking off, or maneuvering of aircraft.
- A right of flight for the passage of aircraft in the airspace above the surface of the property shall be maintained (easement) specifying that any noise inherent in the operation of any aircraft used for navigation shall be allowed. The property shall not be used to create a potential for attracting birds or other wildlife that may pose a hazard to aircraft in accordance with current FAA guidance.

(13) The City and the MCDA recognize, understand and agree that this Real Estate Purchase Agreement is contingent upon approval of the Agreement and the transfer of the Property by the FAA. Approval by the FAA is a condition precedent to the consummation of the contract.

(14) This Agreement may not be assigned by either party without the written consent of the other party. Any assignment of this Agreement by either shall be in writing.

(15) The parties to this Agreement mutually agree that it shall be binding upon their respective heirs, executors, administrators, successors, or assigns.

(16) By signing this Agreement below, the parties each acknowledge, understand, accept, represent and warrant that each has been afforded an opportunity to, and has been advised to retain and consult with their own legal counsel and such other professional advisors as may reasonably be required by the parties to review and fully understand this Agreement and the implications, rights, duties and obligations of the Parties under this Agreement.

(17) This Agreement shall be construed under, and governed by, the laws of the state of West Virginia.

(18) Both the parties agree that this amended contract contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not herein contained.

WITNESS the following signatures and seals the day and year first above written:

CITY OF MORGANTOWN:

By: _____
Its: _____

MONONGALIA COUNTY DEVELOPMENT
AUTHORITY

By: _____
Its: _____