

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING A PART OR PORTION OF SUZANNE ROAD MEASURING FORTY (40) FEET IN WIDTH AND APPROXIMATELY EIGHTY-FIVE (85) FEET, AT ITS LONGEST POINT, IN LENGTH LOCATED AND SITUATE IN THE SECOND WARD OF THE CITY OF MORGANTOWN, MORGAN DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA

Whereas, the Common Council ("Council") of The City of Morgantown, West Virginia ("City"), finds and makes a legislative determination that a part or portion of Suzanne Road ("Street") is a publicly dedicated and accepted easement and right of way for, among other purposes, street purposes, that is shown, illustrated, and depicted on, among other maps or plats of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia ("Clerk's Office"), the map or plat of Haymaker Village of record in the Clerk's Office in Deed Book 727, at 166, and in Envelope No. 23A of Map Cabinet No. 2; and

Whereas, the Council finds and makes a legislative determination that a part or portion of the Street is located and situate within the Second Ward of the municipal limits of the City, in Morgan District, Monongalia County, West Virginia; and

Whereas, the Council finds and makes a legislative determination that a part or portion of the Street was also located and situate within Morgan District, Monongalia County, West Virginia, outside of and beyond the municipal limits of the City; and

Whereas, the Council finds and makes a legislative determination that the part or portion of the Street which was located and situate within Morgan District, Monongalia County, West Virginia, outside of and beyond the municipal limits of the City, was ordered closed, vacated, abandoned, and annulled by the County Commission of Monongalia County, West Virginia, by an order entered on June 25, 2014, of record in the Clerk's Office in Deed Book 1500, at Page 71; and

Whereas, the Council finds and makes a legislative determination that a part or portion of the Street which is located and situate within the municipal limits of the City is adjoined on either side by property of ALP, Inc., a West Virginia corporation ("ALP"); and

Whereas, the Council finds and makes a legislative determination that ALP has petitioned and/or made application to the City to vacate, abandon, and annul the part or portion of the Street which is located and situate within the municipal limits of the City and adjoined on either side by property of ALP; and

Whereas, a map or plat prepared by Ronald A. Talkington, P.S. No. 876, of Consolidated Survey, PLLC, dated June 23, 2014, designated as Job No. 14-0061, which is appended to this Ordinance as Exhibit No. 1 and incorporated into this Ordinance by this reference ("Exhibit Plat"), shows, illustrates, and depicts the part or portion of the Street which is located and situate within the municipal limits of the City, adjoined on either side by property of ALP, and that ALP has petitioned and requested be vacated, abandoned, and annulled by the City ("Vacated Street"); and

Whereas, the Council finds and makes a legislative determination that the Vacated Street is not presently used, useful, or needed for street purposes or, except as otherwise provided for in Section 6 of this Ordinance, any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that the Vacated Street shall not subsequently be used, useful, or needed for street purposes or, except as otherwise provided for in Section 6 of this Ordinance, any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that no party nor any property of any party will be injured, damaged, or prejudiced by the vacation, abandonment, and annulment of the Vacated Street; and

Whereas, the Council finds and makes a legislative determination that it is in the best interests of the City and the public generally that the Vacated Street be vacated, abandoned, and annulled by the City for street purposes and, except as otherwise provided for in Section 6 of this Ordinance, any and all other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that the Vacated Street being vacated, abandoned, and annulled by the City for street purposes and, except as otherwise provided for in Section 6 of this Ordinance, any and all other public uses or purposes will promote the public interest.

Now, Therefore, it is ordained by the Council, in regular session, duly and properly assembled, as follows:

Section 1. The findings and legislative determinations of the Council set forth and contained in the above recitals are incorporated and integrated into this Ordinance by this reference and adopted, confirmed, and affirmed as findings and legislative determinations of the Council.

Section 2. The Exhibit Plat is incorporated and integrated into this Ordinance by this reference.

Section 3. The Vacated Street is described as follows:

Beginning at a point in the southern line of Suzanne Road, standing as a corner to Lots Nos. 1 and 3 in Block F of Haymaker Village, a map of Haymaker Village being of record in the Clerk's Office in Envelope No. 23A of Map Cabinet No. 2, Lot No. 1 being now or formerly owned by Gary A. Hatch and Judy B. Hatch (Deed Book 1077 / Page 558), and Lot No. 3 being now owned by Alp, Inc. (Deed Book 678 / Page 73); thence leaving the southern line of Suzanne Road and Lots Nos. 1 and 3, and crossing Suzanne Road, N. 14° 06' 50" E. 40.00 feet to a point in the northern line of Suzanne Road, standing in the line of Lot No. 6 in Block D of Haymaker Village, now owned by Alp, Inc. (Deed Book 678 / Page 73); thence with the northern line of Suzanne Road and Lot No. 6, S. 75° 53' 10" E 85.42 feet to a point, standing in The City of Morgantown corporation line; thence leaving the northern line of Suzanne Road and Lot No. 6, and with the corporation line, re-crossing Suzanne Road, S. 59° 25' 08" W. 56.87 feet to a point in the southern line of Suzanne Road and in the line of Lot 3 in Block F of Haymaker Village; thence leaving the corporation line and with the southern line of Suzanne Road and Lot No. 3, N. 75° 53' 10" W. 45.00 feet to the place of beginning, containing 2,608 square feet or 0.06 acre, more or less.

Section 4. Upon the adoption of this Ordinance, for the reasons set forth and contained in the above recitals, the easement and right of way of the City for street purposes and any and all other public uses or purposes in, of, and to the Vacated Street is and shall be vacated, abandoned, and annulled by the City, with the intent and effect that from and subsequent to the date of the adoption of this Ordinance the Vacated Street shall cease to be a part or portion of any public easement and right of way or any public street.

Section 4. Upon the adoption of this Ordinance, for the reasons set forth and contained in the above recitals, the easement and right of way of the City for street purposes and, except as otherwise provided for in Section 6 of this Ordinance, any and all other public uses or purposes in, of, and to the Vacated Street is and shall be vacated, abandoned, and annulled by the City, with the intent and effect that from and subsequent to the date of the adoption of this Ordinance the Vacated Street shall, except as otherwise provided for in Section 6 of this Ordinance, cease to be a part or portion of any public easement and right of way or any public street.

Section 5. Upon the adoption of this Ordinance, except as otherwise provided for in Section 6 of this Ordinance, any and all right, title, interest, claim, and estate of the City, of any and every nature, kind, character, manner, and description, in, of, and to the Vacated Street is and shall be cancelled, terminated, vacated, abandoned, annulled, released, and relinquished in favor of and for the benefit of ALP and its successors and assigns.

Section 6. Notwithstanding the vacation, abandonment, and annulment of the Vacated Street set forth and provided for in this Ordinance, the City, for the benefit of the Morgantown Utility Board, keeps, excepts, reserves, and retains a perpetual easement and/or right of way in, on, over, upon, under, through, and across the Vacated Street for the purposes of installing, laying, extending, constructing, re-installing, re-laying, re-extending, re-constructing, inspecting, repairing, replacing, removing, maintaining, and operating lines, conduits, pipes, mains, laterals, inlets, catch basins, manholes, and connections, attachments, additions, appurtenances, and/or related equipment and facilities necessary, appropriate, useful, convenient, and/or incidental to capturing, collecting, securing, controlling, delivering, transmitting, transporting, carrying, channeling, flowing, discharging, distributing, draining, retaining, and/or storing storm water, drainage, runoff, water, and/or sewage, whether by currently existing technology or subsequently developed technology ("Utility Facilities").

Section 7. In the event that ALP or its successors or assigns shall subsequently apply to the City and/or MUB to remove and relocate the Utility Facilities to a different location and grant to the City and/or MUB easements and/or rights of way in a different location with respect to the relocated Utility Facilities, MUB shall have the right, capacity, and authority, without further action on the part of the Council, to release, cancel, and terminate the easement and/or right of way kept, excepted, reserved, and retained in Section 6 of this Ordinance and execute and acknowledge and deliver to ALP or its successors or assigns an instrument, in recordable form, to that effect.

Section 8. Upon the adoption of this Ordinance, the City Clerk shall provide a certified photocopy of this Ordinance to counsel for ALP for the purpose of such counsel admitting the same of record in the Clerk's Office as evidence of, among other matters, the vacation, abandonment, and annulment of the Vacated Street.

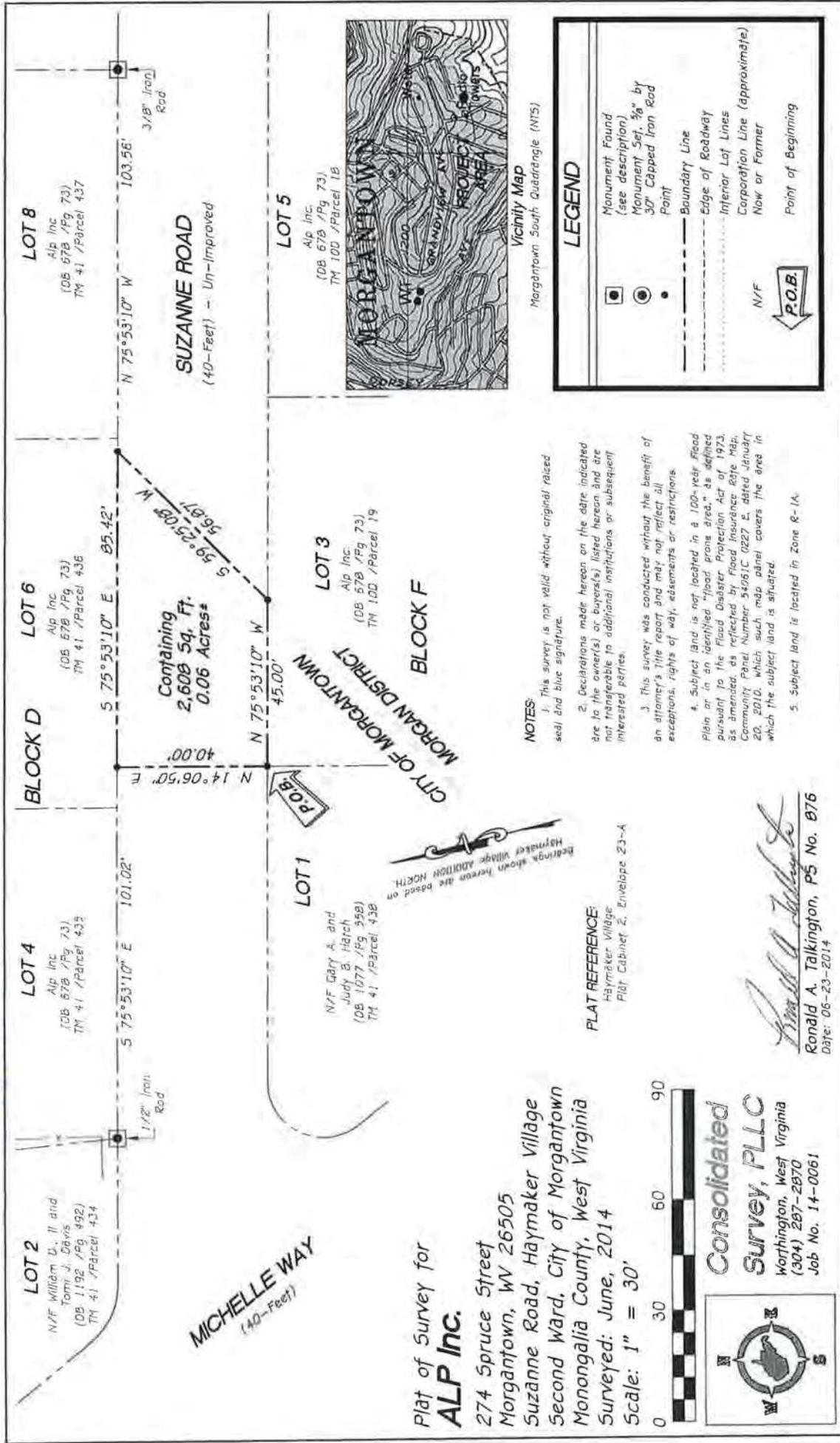
Section 9. This Ordinance shall be effective from the date of its adoption.

First Reading: _____, 2014
Adopted: _____, 2014
Filed: _____, 2014
Recorded: _____, 2014

Mayor

City Clerk

EXHIBIT #1



City of Morgantown Annulment Application

This Application is made this the 7th day of July, 2014, by ALP, Inc., a West Virginia corporation (“Applicant”), to The City of Morgantown, West Virginia, a municipal corporation (“City”).

Whereas, Applicant is the owner of Lots Nos. 3, 4, 5, 6, 7, and 8 of Block C of Haymaker Village, Lots Nos. 4, 6, 7, 8, 9, and 11 of Block D of Haymaker Village, and Lot No. 3 of Block F of Haymaker Village, which are located and situate, in whole or in part, within the Second Ward of the municipal limits of City, in Morgan District, Monongalia County, West Virginia (“Lots”); and

Whereas, the Lots abut and adjoin a part or portion of Doris Road and a part or portion of Suzanne Road (“Streets”); and

Whereas, parts or portions of the Streets are located and situate within the Second Ward of the municipal limits of City, in Morgan District, Monongalia County, West Virginia; and

Whereas, Applicant petitions and/or makes application to City for the vacation, abandonment, and annulment of the parts or portions of the Streets which are abutted and adjoined by the Lots and located and situate within the Second Ward of the municipal limits of City; and

Whereas, Applicant has filed this Application in duplicate with City; and

Whereas, Applicant has paid to City the requisite fee(s); and

Whereas, maps or plats prepared by Ronald A. Talkington, P.S. No. 876, of Consolidated Survey, PLLC, dated June 23, 2014, designated as Job No. 14-0061, which are appended to this Application as Exhibit No. 1 and Exhibit No. 2, respectively, and incorporated into this Application by this reference, show, illustrate, and depict the parts or portions of the Streets which are located and situate within the municipal limits of City, adjoined on either side by the Lots, and that Applicant petitions and requests be vacated, abandoned, and annulled by City (“Vacated Streets”); and

Wherefore, for and in consideration of the requisite fee(s) Applicant has paid to City, and other good and valuable consideration, Applicant petitions and/or makes application to City for the following:

- (1) A finding and legislative determination by the Common Council of City that the Vacated Streets are not presently used, useful, or needed for street purposes or any other public uses or purposes.
- (2) A finding and legislative determination by the Common Council of City that the Vacated Streets shall not subsequently be used, useful, or needed for street purposes or any other public uses or purposes.
- (3) A finding and legislative determination by the Common Council of City that no party nor any property of any party will be injured, damaged, or prejudiced by the vacation, abandonment, and annulment of the Vacated Streets.
- (4) A finding and legislative determination by the Common Council of City that it is in the best interests of City and the public generally that the Vacated Streets be vacated, abandoned, and annulled by City for street purposes and any and all other public uses or purposes.
- (5) Upon the Common Council of City making the requisite findings of fact and legislative determinations, the adoption of ordinances substantially identical to those appended to this Agreement as Exhibit No. 3 and Exhibit No. 4, respectively.

Signature Page Follows

Witness the following signature.

ALP, Inc., a West Virginia corporation

By: Thomas R. August
Name: Thomas R. August
Title: Vice President

State of West Virginia,
County of Monongalia, to-wit:

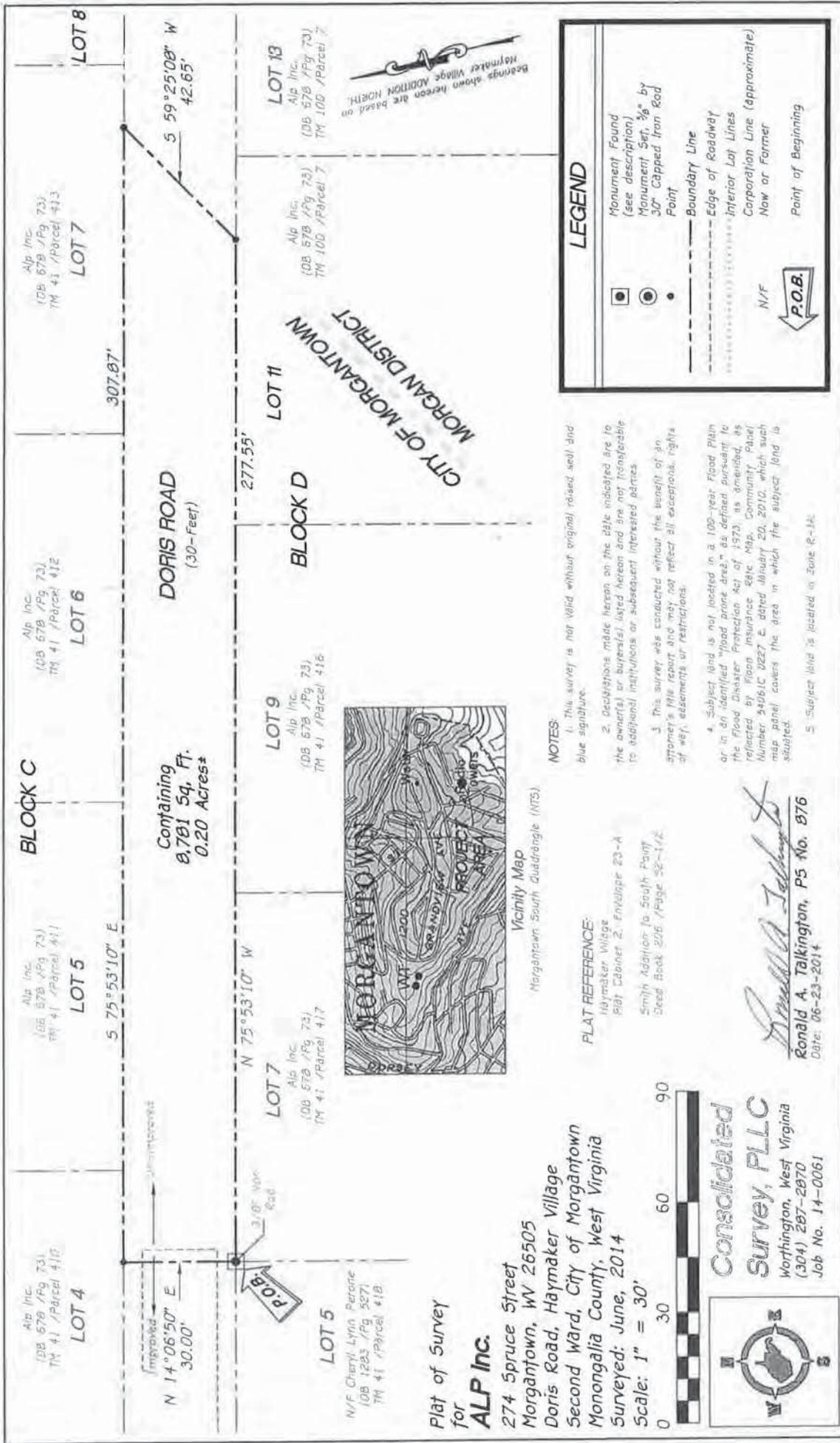
The foregoing instrument was executed and acknowledged before me this the 7 day of July, 2014, by Thomas R. August, in his/her capacity as Vice President of ALP, Inc., a West Virginia corporation, for and on behalf of such corporation, as the act and deed of such corporation.

{SEAL}



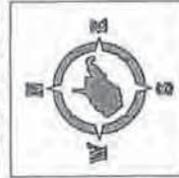
Melissa Lakatos
Notary Public
My Commission expires: 2/11/15

Exhibit No. 1 to City of Morgantown Annulment Application



Plat of Survey
for
ALP Inc.

274 Spruce Street
Morgantown, WV 26505
Doris Road, Haymaker Village
Second Ward, City of Morgantown
Monongalia County, West Virginia
Surveyed: June, 2014
Scale: 1" = 30'



Consolidated
Survey, PLLC
Worthington, West Virginia
(304) 287-2870
Job No. 14-0061

Ronald A. Talkington
Ronald A. Talkington, P5 No. 876
Date: 06-23-2014

- NOTES:**
- This survey is not valid without original, raised, seal and blue signature.
 - Designations made hereon on the title indicated are to the owners or buyers, listed hereon and are not transferable to additional institutions or subsequent interested parties.
 - This survey was conducted without the benefit of an attorney's file report and may not reflect all exceptional rights of way, easements or restrictions.
 - Subject land is not located in a 100-year Flood Plain or in an identified "flood prone area" as defined pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map, Community Panel Number 54061C 0227 E, dated January 20, 2010, which such map panel covers the area in which the subject land is situated.
 - Subject land is located in Zone R-1A.

PLAT REFERENCE:
Haymaker Village
P181 Cabinet 2, Envelope 23-A
Smith Addition to South Point
Deed Book 206 /Page 52-1/2

Exhibit No. 2 to City of Morgantown Annulment Application

Exhibit No. 3 to City of Morgantown Annulment Application