



Office of the City Clerk

The City of Morgantown

Linda L. Tucker, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
ltucker@morgantownwv.gov

AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
October 20, 2015
7:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES: October 6th, 2015 Regular Meeting**
5. **PUBLIC HEARINGS:**
 - A. **AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.**
 - B. **AN ORDINANCE ANNEXING PROPERTY OF THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS AND WEST VIRGINIA DEPARTMENT OF TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN.**
 - C. **AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN.**
 - D. **AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.**
 - E. **AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE SERVICE.**

6. UNFINISHED BUSINESS:

A. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE. (First Reading October 6th, 2015)

B. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE ANNEXING PROPERTY OF THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS AND WEST VIRGINIA DEPARTMENT OF TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN. (First Reading October 6th, 2015)

C. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN. (First Reading October 6th, 2015)

D. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT. (First Reading October 6th, 2015)

E. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE SERVICE. (First Reading October 6th, 2015)

F. BOARDS AND COMMISSIONS

7. PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION

8. SPECIAL COMMITTEE REPORTS:

9. **NEW BUSINESS:**

- A. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH FRIENDS OF DECKERS CREEK, INC. FOR SPACE AT THE WOODBURN SCHOOL SITE.**
- B. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH MORGANTOWN THEATER COMPANY FOR SPACE AT THE METROPOLITAN THEATER.**

10. **CITY MANAGER'S REPORT:**

New Business:

- 1. Agreement with West Virginia Radio Corporation
- 2. Municipal Court Technology upgrade
- 3. Fiscal Year 2015 Police and Fire Pension Fund Reports

11. **REPORT FROM CITY CLERK:**

12. **REPORT FROM CITY ATTORNEY:**

13. **REPORT FROM COUNCIL MEMBERS:**

14. **ADJOURNMENT:**

If you need an accommodation contact us at (304) 284-7439



The City of Morgantown

City Manager

Jeff Mikorski, ICMA-CM

389 SPRUCE STREET

MORGANTOWN, WEST VIRGINIA 26505

(304) 284-7405 FAX: (304) 284-7430

www.morgantownwv.gov

Office of the City Manager

City Manager's Report for City Council Meeting on October 20, 2015

New Business:

1. Agreement with West Virginia Radio Corporation

The attached agreement with the West Virginia Radio Corporation allows the trimming of a eight trees along Deckers Creek in Marilla Park to allow satellite signals to reach the West Virginia Radio Corporation's dishes at their facility on Earl Core Road. Over the years, trees along the creek grew tall enough to interfere with satellite signals needed for emergency broadcasting service. The Tree Board's recommendation was to allow the trimming of the trees but make sure the creek bank was protected with additional plantings and repair if any of the trimmed trees fail. I recommend Council authorize me to sign the agreement and move the project forward.

2. Municipal Court Technology upgrade

With the introduction of a Municipal Court Technology Fee approved by City Council April 7, 2015, the City began to look at the needs of the Municipal Court and work with vendors that have installed court technology equipment. Electronic Specialties Company recently installed the technology equipment to all courts in the County Justice Center and provided a recommendation for upgrading our Municipal Court based on meetings with the Municipal Judge and Assistant City Attorney. Total cost of the upgrade is \$28,438.00, which will be paid with the funds generated by the Municipal Court Technology Fee as it is collected and submitted to the Capital Escrow Fund. I recommend City Council to authorize me to sign the attached contract with Electronic Specialty Company.

3. Fiscal Year 2015 Police and Fire Pension Fund Reports

As included in the attached report by Lori Livengood, Acting Finance Director, the Police and Fire Pension reports are submitted to City Council for approval. The Municipal Pensions Oversight Board require approval from the governing body before the State portion of funding can be invoiced and deposited into the accounts. I agree with the reports, and recommend City Council approve the reports as provided.


Jeff Mikorski ICMA-CM,
Morgantown City Manager

AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, by and between THE CITY OF MORGANTOWN, WEST VIRGINIA, a municipal corporation and political subdivision of the State of West Virginia (the "City"), and WEST VIRGINIA RADIO CORPORATION a duly authorized West Virginia corporation ("WVRC").

WHEREAS, the City holds legal title to certain tracts or parcels of land in Monongalia County containing eight existing trees along Decker's Creek, which are particularly identified on "Exhibit 1" to this Agreement; and,

WHEREAS, WVRC operates an office at 1251 Earl Core Road, Morgantown, West Virginia; and

WHEREAS, WVRC desires to provide for the trimming of the identified trees in order to allow satellite reception at its office; and

WHEREAS, the City desires to accommodate the tree-trimming request in a manner that ensures the viability of the existing trees and the continued preservation of the banks of Decker's Creek;

NOW, THEREFORE, WITNESSETH: That, for and in consideration of the premises stated, and intending to be legally bound by the terms and provisions of this Agreement, it is hereby covenanted and agreed as follows:

1. Scope of Services

The City, by and through its designated agents or third parties, will provide the following services pursuant to this Agreement and in compliance with applicable laws, regulations and ordinances:

- a. Engage in one (1) project to trim the four trees identified on Exhibit 1 as required to permit satellite reception at the WVRC office on Earl Core Road. This Agreement shall not constitute a continuing obligation on the part of the City to trim the identified trees.
- b. Plant understory trees in the area of the trimmed trees in the location(s) and numbers determined by the City as necessary.

2. Payment for Services:

- a. WVRC agrees to reimburse the City the full cost of the services performed pursuant to Paragraph 1 of this Agreement. WVRC shall be obligated to pay any and all amounts shown on a valid invoice not to exceed \$7,500.00 – including an invoice prepared by the City for the value of services rendered by its employees or

with its equipment – for services rendered pursuant to Paragraph 1 of the Agreement. WVRC shall have no right to dictate the value of services performed or reduce the amount owed for services performed, which shall at all times be determined by the City and/or its contractors.

- b. City and WVRC agree that the value of the trees identified on Exhibit 1 remaining in place is equivalent to a minimum amount of Ten Thousand Dollars (\$10,000.00), and accordingly WVRC will pay, as liquidated damages and not a penalty, the total amount of Ten Thousand Dollars (\$10,000.00), in the event an authorized representative of the City determines that any tree trimmed pursuant to this Agreement is impaired or has fallen in whole or in part by reason of the trimming performed pursuant to this Agreement within four (4) years of the date of execution of this Agreement. No amount in excess of Ten Thousand Dollars (\$10,000.00) will be paid pursuant to this provision.

3. Security:

WVRC agrees to undertake the following obligations:

- a. Furnish a bond for a four-year period from the date of execution of this Agreement, in a form acceptable to City, in the amount of Ten Thousand Dollars (\$10,000.00) securing the liquidated damages obligation provided in Paragraph 2.b.

4. Waiver of Liability:

City and WVRC each waive against the other party any claim to damages or liability arising as a result of the services performed under this Agreement; provided, that City retains any and all rights to pursue collection of amounts owed pursuant to the terms of this Agreement.

5. Notices: Any notice, demand or request which under the terms of this Agreement or under any law must or may be given or made by either of the parties hereto to the other party shall be in writing, and shall be given delivered by mailing the same by certified or registered United States mail, postage prepaid, addressed as follows:

To City: City of Morgantown
c/o City Manager
389 Spruce Street
Morgantown, WV 26505

To WVRC: West Virginia Radio Corporation, Inc.

c/o Dale B. Miller, President
260 Spruce Street
Morgantown, WV 26505

Either party may designate in writing any new or other address to which such notice, demand or request shall be delivered in the manner provided herein. Any such notice, demand or request shall be deemed given when deposited in the United States mail with postage prepaid.

4. Modification: This instrument contains all the agreements and conditions made between the parties hereto with respect to the annexation and development of property, and may not be modified, waived, or terminated in any manner other than by an agreement in writing signed by all the parties hereto or their respective successors in interest.

5. Rights of Successors and Assigns: The covenants and agreements contained in this Agreement shall apply, inure to the benefit of, and be binding upon the parties and their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

6. Applicable Law: The laws of the State of West Virginia shall govern the rights and duties of the parties to this Agreement and the interpretation of its provisions.

7. Captions: The captions used herein are included only for convenience and reference, and are in no way to define, limit, or describe the scope of the terms and conditions of the Agreement and will not be considered in the interpretation, construction, or enforcement hereof.

9. Duplicate Originals: This Agreement may be executed in duplicate originals, each of which shall have the force and effect of an original of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their undersigned officials as of the date first hereinabove mentioned.

The City of Morgantown, West Virginia

By: _____
Name: Jeff Mikorski
Title: City Manager

West Virginia Radio Corporation, Inc.

By: _____
Name: Dale B. Miller
Title: President

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

The foregoing instrument was executed and acknowledged before me this _____ day
of _____, 2015, by Jeff Mikorski, City Manager of The City of Morgantown, West Virginia, a
municipal corporation.

Notary Public

My commission expires:

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

The foregoing instrument was executed and acknowledged before me this _____ day
of _____, 2015, by Dale B. Miller, President of West Virginia Radio Corporation, Inc.

Notary Public

My commission expires:

EXHIBIT 1

Client: 4105445

Printed on: 10/6/2015

Created on: 8/6/2014

City of Morgantown
Attn: Dave Barnett
Dave Barnett
389 Spruce St
Morgantown, WV 26505

Bartlett Tree Experts
Ben Hartranft - Representative
PO Box 54
Imperial, PA 15126-0054

Business: 3042884088

Business: (724)695-1660
Fax Number: (724)695-1550
E-Mail Address: bhartranft@bartlett.com

Property Address: CITY OF MORGANTOWN, MORGANTOWN, WV 26505

The following program is recommended for certain trees and shrubs on your property. In addition to a thorough plant health care program, Bartlett Tree Experts recommends having a qualified arborist inspect your property periodically to assist you in identifying potential risks or hazardous conditions relating to your trees or shrubs. THIS IS NOT AN INVOICE.

Tree and Shrub Work

Prune trees listed below located at the edge of Deckers creek at Marilla Park according to the following specifications:

- The object of this job is to significantly bring the height of the trees down to reduce satellite interference. If possible the trees will be left at a final height of 30' to 40'. The arborist on site for the job will make the decision of how much can be taken off without killing the trees. The Black Locust along the road will only have limbs removed from the side towards the creek and parking area. The large Black Locust at the left edge of the work zone will only have dead limbs removed.

Remove resulting debris.

- Trees to be worked:

- Black Locust (along road)
- 2 Black Locust (along creek)
- Willow
- 3 Sycamores
- large Black Locust (left edge of group of trees to be worked on)

Amount: \$5,400.00

Client: 4105445

Printed on: 10/6/2015

Created on: 8/6/2014

Please review the information and the terms and conditions attached, which become part of the agreement, and sign and return one copy authorizing the program.

(Customer Signature)

(Date)

(Bartlett Representative - Ben Hartranft)

(Date)

Prices are guaranteed if accepted within thirty days.
All accounts are net payable upon receipt of invoice.
Work is done in accordance with ANSI standards.

To access a certificate of liability insurance for Bartlett Tree Experts, please navigate to
<http://www.bartlett.com/BartlettCOI.pdf>

A Job Site Safety Analysis was completed for your property, please contact your arborist for further details.



1325 DUNBAR AVENUE • P.O. BOX 400 • DUNBAR, WV 25064
PHONE 304-766-6277 • 800-642-5500 • FAX 304-766-6270

City of Morgantown

DATE: September 11, 2015 (Our 68th Year)

QUOTATION NO: 15-0824-01 Rev1

REFERENCE: Municipal Court Sound

Attn: Jeff Mikorski, ICMA-CM

WE ARE PLEASED TO SUBMIT OUR QUOTATION FOR THE FOLLOWING PROJECT.

New courtroom sound system with Mondopad videoconferencing touch screen.

Cost information:

Summary of Cost Information

Equipment and technical services.... \$24,947.94 plus all applicable taxes

Approved By _____ Date _____ PO# _____

Detailed Bill of Material as follows;

EQUIPMENT:

1	Infocus	INF5720-Kit Mondopad Flat Panel Display
1	Chief	LTM1U Flat Panel Mount
1	AMX	MST-1001 10" Table Touch Panel
1	AMX	NX1200 Control Processor
1	AMX	PSR4.4 Power Supply
1	Biamp	Tesira Forte TI Sound Processor with telephone interface
3	Shure	MX418DC 18" Gooseneck Desktop Microphone
1	Shure	MX418C 18" Gooseneck XLR Microphone
1	Shure	GLXD24/B87A Wireless Handheld System
1	Shure	577B Paging Microphone
8	EV	C4.2 Ceiling speakers for hallway (qty. 4) and adjacent overflow rooms (qty. 4).
2	KSI	6061-CSD Angled front firing speakers for back of courtroom. (Present jury or visitor area.)
1	KSI	6061-CS Downward firing speaker for center of courtroom.
2	JBL	CSA 280Z Two channel amplifiers for room sound amplification.
1	Lot	Cables and Connectors wall plates.
1	Middle Atlantic	C5-FF27-1 Single Bay Credenza Frame
1	Middle Atlantic	C5-KK27-1SDT Finish kit in stock Maple
1	Intellinet	POE Switch
1	APC	SMC1500-2U Backup UPS
1	Freight	
1	Technical Services	

Total Project Scope:

Municipal Court System-ESCOM will install a 57" Mondopad on the side wall of the courtroom that will be utilized for video arraignment and also to allow videoconferencing to other sites to be available in the courtroom. The unit allows the attorneys and any other personnel to display evidence on the screen of the Mondopad and enables the same to annotate over the evidence during the court session. ESCOM will install a state of the art sound system processor equipped with 12 mic line inputs and 8 outputs and a fully functional analog telephone interface. Escom will install three 18" gooseneck desk microphones for the judge and two attorney's positions and a wall mounted 18" gooseneck microphone for the witness position. We will also provide a Shure wireless handheld microphone to be used for the

Jury or other people needing to speak. A set of jacks will be installed in the clerks position to allow recording of the session for archiving and digital records. An AMX control system will be installed with a 10" touch panel to allow the clerk or other personnel to control the sound levels and to set up the operation for normal or overflow mode of operation. This control interface will also allow the operator to make and receive telephone calls during the court session over the sound system. A handheld paging style microphone will be provided to allow the bailiff to page people to the courtroom that may be in the hallway or the rooms adjacent to the courtroom. Speakers will be installed in the courtroom and the adjacent rooms along with the hallway to allow sound support and paging to the outlying areas. All rack mountable equipment will installed into a single bay credenza that will occupy the space where the existing Polycom cart system now resides. The credenza top can be utilized to hold either a laptop computer or a DVD player depending upon the use for video display of evidence. The Polycom system can be removed from the courtroom and utilized in another area. Full operator training will be provided to enable personnel to fully operate the system.

System Warranty:

Starting from the customer sign off acceptance of the system, Escom provides a complete one year system warranty period for all installation and equipment. Beyond this one year period we utilize the manufacturer warranty periods for all equipment. AMX provides up to a three year warranty period on their touch screens except for damages due to user negligence. Other manufacturers warranty periods vary. Extended system service contract periods are available from ESCOM on a single year or multi-year arrangement. Our service contracts department will contact you prior to your system reaching the one year period to see if you are interested in extending your service contract.

Standard Terms for the above:

- Invoice for equipment upon delivery, net 30 days each invoice
- Proposal is not subject to retainage
- Balance upon completion, net 30 days each invoice

Since 1947 Electronic Specialty Company has provided quality local service for life safety & critical communication systems
 Authorized sales and service for Edwards Fire Alarm equipment since 1964 (now a division of GE Security)
 Authorized sales and service for Rauland Communication equipment since 1959
 Authorized Strategic Partner with GE Security for Fire Alarm/Access Control/CCTV & Security
ELECTRONIC SPECIALTY COMPANY HAS A "SUBSTANCE DETECTION" POLICY AND A "DRUG FREE" WORKPLACE IN EFFECT.
ELECTRONIC SPECIALTY COMPANY IS A MEMBER OF THE AMERICAN SOCIETY OF INDUSTRIAL SECURITY(ASIS)
ELECTRONIC SPECIALTY COMPANY IS AN ASSOCIATE MEMBER OF THE WV SOCIETY OF HEALTHCARE ENGINEERS(WVSHE))

DELIVERY: Equipment 4 weeks A.R.O. or sooner

Your Consideration will be very much appreciated.

FOB: Project Site

ELECTRONIC SPECIALTY CO.

TERMS: 30 days, Each Invoice

Authorized by: Tom Fitzwater

This quotation is offered for your acceptance within 30 days
WV Contractors License #WV 010229

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

MEMO

DATE: October 1, 2015

TO: Jeff Mikorski, ICMA-CM, City Manager

FROM: Lori Livengood, Acting Finance Director

RE: FY15 Annual Reports of Police & Fire Pension Funds

Attached are copies of the Annual Reports for the fiscal year ended June 30, 2015 for the Morgantown Police and Fire Pension Funds required by the WV Municipal Pensions Oversight Board. Please include this item on the agenda for the October 20th City Council meeting as part of your City Manager's report. Once Council approves the reports, we will be able to make requests for the State's insurance tax allocation.

The most recent actuarial valuation is the 7/1/13 valuation. Pension fund balances have changed as follows:

	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>
Policemen's Pension	\$12,600,466	\$14,427,833	\$14,434,407
Firemen's Pension	\$10,083,656	\$11,447,092	\$11,510,863

The funded ratio for the two plans decreased from the previous actuarial valuation as follows:

	<u>7/1/11</u>	<u>7/1/12</u>	<u>7/1/13</u>
Policemen's Pension	31.79%	28.29%	28.37%
Firemen's Pension	31.48%	28.43%	28.61%

Please let me know if you have any questions or need additional information.

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Pension Fund	Morgantown Firemen's Pension & Relief Fund
Treasurer	Lori Livengood, Acting Finance Director
Municipality	City of Morgantown, West Virginia
Fiscal Year (July 1 - June 30)	July 1, 2014 - June 30, 2015
Actuarial Funding Method	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years <input type="checkbox"/> Conservation Funding Method

PART I		Item	Amount
Beginning Fair Value of Pension Plan		July 1	\$ 11,447,092.32
I. Revenue During Fiscal Year			
1. Employee Contributions for employees hired prior to Jan. 1, 2010	Percent of Gross Salary	7.00%	
Total amounts contributed by employees or withheld from their salaries			\$ 135,141.56
2. Employee Contributions for employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%	
Total amounts contributed by employees or withheld from their salaries			\$ 56,188.61
3. Employee Contributions for Plans utilizing the Conservation Funding Method	Percent of Gross Salary	1.50%	
Total amounts contributed by employees or withheld from their salaries			\$ -
4. Government Contributions			
a. From Parent Local Government			
Required employer contributions from your municipality			\$ 585,139.34
b. Additional employer contributions from your municipality			
			\$ 33,673.66
c. From State Government			
Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)			\$ 451,492.01
5. Earnings on Investments			
a. Net Appreciation/(Depreciation) of Fair Value of Investments			\$ (481,732.64)
b. Short Term & Fixed Income Interest			\$ 149,611.42
c. Dividends			\$ 114,912.10
d. Net Realized Gain (Loss) on Sale or Exchange of Assets			\$ 608,450.31
e. Other			\$ 166.44
f. Less Investment Expense			\$ (90,996.86)
Net Investment Income			\$ 300,410.77
6. All Other Revenues			
Please Specify			
Total Revenues			\$ 1,562,045.95
The sum of items I.1. through I.6.			

PART II		Item	Amount
Expenditures During Fiscal Year		Does not include Investment Expenses, see I.5 f. on first page	
1. Benefits Paid			
Retirement, disability, survivor and any other benefits			\$ 1,496,332.20
2. Withdrawals			
Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment			\$ -

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

3. Other Payments			
Administrative expenses and other costs or payments not representing benefit payments or withdrawals			
a. Administration	Municipal administration fees		\$ -
b. Other	Example: Pension Secretary expenses, Rent, etc		\$ 1,943.00
Total Expenditures			\$ 1,498,275.20
The sum of items II.1. through II.3.b.			
Net Income/(Loss)			\$ 63,770.75
Ending Fair Value of the Pension Plan			\$ 11,510,863.07
June 30			
III Asset Allocation at End of Fiscal Year			
1. Cash and Cash Equivalents - Short Term		Percent of Total Assets	11.68%
Financial Institution or Money Manager		Type of Account	Fair Value
a. Huntington Bank	Checking	\$ 9,957.98	
b.	Treasury Bills	\$ -	
c. Morgan Stanley	Savings or Money Market Account	\$ 1,334,440.69	
d.	Short Term Investment Funds	\$ -	
e.	Re-Purchase Agreements	\$ -	
f.	Commercial Paper	\$ -	
g.	CDs and Bankers' Acceptances	\$ -	
			Fair Value
Total Cash and Cash Equivalents		The sum of items 1 a. through 1 g.	\$ 1,344,398.67
2. Fixed Income - Long Term		Percent of Total Assets	29.39%
Financial Institution or Money Manager		Type of Account	Fair Value
a. Morgan Stanley	US Govt Agencies & Instruments	\$ 1,440,532.67	
b.	Foreign Govt, Subdivisions, Agencies or Enterprise	\$ -	
c.	International agencies or supranational entities	\$ -	
d.	Mortgage-related or others asset back securities	\$ -	
e. Morgan Stanley	Corporate Debt Securities	\$ 1,942,373.55	
f.	Corporate Inflation-index bonds	\$ -	
g.	Bank CD's, fixed time deposits, Bankers Acceptance	\$ -	
h.	State & Local Govt Debt Securities	\$ -	
i.	Mutual Funds (Bonds)	\$ -	
j.	International Mutual Funds - Bonds	\$ -	
k.	Exchange Traded Funds (ETF) - Bonds	\$ -	
l.	International Exchange Traded Funds (ETF) - Bonds	\$ -	
			Fair Value
Total Fixed Income (at fair value)		The sum of items 2 a. through 2 l.	\$ 3,382,906.22
3. Equity Investments		Percent of Total Assets	58.93%
Financial Institution or Money Manager		Type of Account	Fair Value
a. Morgan Stanley	Individual Stocks Held	\$ 6,783,558.18	
b.	Mutual Fund Shares (Equities)	\$ -	
c.	Exchange Traded Funds (ETF)	\$ -	
d.	International Stocks Held	\$ -	
e.	International Mutual Funds - Equities	\$ -	
f.	International Exchange Traded Funds (ETF)	\$ -	
			Fair Value
Total Equity Investments (at fair value)		The sum of items 3 a. through 3 f.	\$ 6,783,558.18

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

4. Alternative Investments		Percent of Total Assets	0.00%
Financial Institution or Money Manager		Type of Account	Fair Value
a.		Real Estate Investment Trust	\$ -
b.		Private Equity Fund	\$ -
c.		Hedge Funds	\$ -
d.		Other Alternative Investments	\$ -
			Fair Value
Total Alternative Investments (at fair value)		The sum of items 4 a through 4 d	\$ -
Total Assets		Sum of III.1. through III.4.	\$ 11,510,863.07

III.5 Total return on investments for the period of July 1 thru June 30	(Obtain from financial institution or money manager)
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PART II

Membership and Beneficiaries

* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.

** Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a(a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to August 1st of each year.

Item	Avg. Monthly #
I. Members of your Pension Fund	
1. Active Members	47.67
2. Inactive Members	
II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year	
1. Retirees	53.83
2. Disability Retirees	2.00
a. Number of Disability Applications received during the fiscal year	
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details	
(1.) Disability Applications Approved during Fiscal Year	
(2.) Disability Applications Denied during Fiscal Year	
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund	4.20%
4. Survivors (of Deceased Members) Drawing Benefits	14.00

PART III

Legal Thresholds for Investments

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	(1)	(2)	(3)
	%	Maximum % and \$	(Over) Under
Equity Investments	59%	75%	16%
International Securities	0%	30%	30%
Alternative Investments	0%	25%	25%
Cash/Cash Equivalents and Fixed Income (Low 25%; High 75%)	41%	25% 75%	-16% 34%
Short Term Investment - (90 days of expenses)		\$ 374,568.80	\$ (969,829.87)

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Pension Fund	Morgantown Policemen's Pension & Relief Fund
Treasurer	Lori Livengood, Acting Finance Director
Municipality	City of Morgantown, West Virginia
Fiscal Year (July 1 - June 30)	July 1, 2014 - June 30, 2015
Actuarial Funding Method	<input type="checkbox"/> Standard Funding Method <input type="checkbox"/> Optional Funding Method <input checked="" type="checkbox"/> Alternative Funding Method (107%) <input type="checkbox"/> % Necessary to Maintain Plan Solvency for 15 Years <input type="checkbox"/> Conservation Funding Method

PART I		Item	Amount
Beginning Fair Value of Pension Plan		July 1	\$ 14,427,833.20
I. Revenue During Fiscal Year			
1. Employee Contributions for employees hired prior to Jan. 1, 2010	Percent of Gross Salary	7.00%	
Total amounts contributed by employees or withheld from their salaries			\$ 280,599.67
2. Employee Contributions for employees hired on or after Jan. 1, 2010	Percent of Gross Salary	9.50%	
Total amounts contributed by employees or withheld from their salaries			\$ 62,844.78
3. Employee Contributions for Plans utilizing the Conservation Funding Method	Percent of Gross Salary	1.50%	
Total amounts contributed by employees or withheld from their salaries			\$ -
4. Government Contributions			
a. From Parent Local Government			
Required employer contributions from your municipality			\$ 720,777.96
b. Additional employer contributions from your municipality			\$ -
c. From State Government			
Municipal Pensions Oversight Board (premium surcharges on fire and casualty insurance)			\$ 578,714.45
5. Earnings on Investments			
a. Net Appreciation/(Depreciation) of Fair Value of Investments			\$ (605,139.20)
b. Bond Interest			\$ 188,255.69
c. Dividends			\$ 154,060.31
d. Net Realized Gain (Loss) on Sale or Exchange of Assets			\$ 748,159.30
e. Other			\$ 228.18
f. Less Investment Expense			\$ (112,676.35)
Net Investment Income			\$ 372,887.93
6. All Other Revenues			
Please Specify			
Total Revenues			\$ 2,015,824.79
The sum of Items I.1. through I.6.			

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Item		Amount
II Expenditures During Fiscal Year		
<i>Does not include Investment Expenses, see 1.5 f. on first page.</i>		
1. Benefits Paid	Retirement, disability, survivor and any other benefits	\$ 1,974,706.95
2. Withdrawals	Amount paid to employees or former employees or their survivors, representing return of contributions made by employees during the period of their employment	\$ 33,200.18
3. Other Payments	Administrative expenses and other costs or payments non-representing benefit payments or withdrawals	
a. Administration	Municipal administration fees	\$ -
b. Other	Example: Pension Secretary expenses; Rent; etc.	\$ 1,344.00
Total Expenditures	The sum of items II.1. through II.3.b.	\$ 2,009,251.13
Net Income/(Loss)		\$ 6,573.66
Ending Fair Value of the Pension Plan	June 30	\$ 14,434,406.86
III Asset Allocation at End of Fiscal Year		
1. Cash and Short-Term Investments	Percent of Total Assets	12.11%
	Institution or Money Manager	Type of Account
		Fair Value
a. Huntington Bank	Checking	\$ 15,046.76
b.	Non-Interest Bearing	\$ -
c. Morgan Stanley	Savings or Money Market Account	\$ 1,733,338.48
d.	Certificates of Deposit	\$ -
e.	Re-Purchase Agreements	\$ -
Total Cash and Short-Term Investments	The sum of items 1.a through 1.e	\$ 1,748,385.24
2. Government Securities	Percent of Total Assets	12.44%
	Institution or Money Manager	Type of Account
		Fair Value
a. Morgan Stanley	Treasury Notes and Bonds	\$ 1,795,063.87
b.	State and Municipal Bonds	\$ -
c.	Mutual Funds (Government Bonds)	\$ -
Total Government Securities (at fair value)	The sum of items 2.a. through 2.c.	\$ 1,795,063.87
3. Corporate Bonds	Percent of Total Assets	17.13%
	Institution or Money Manager	Type of Account
		Fair Value
a. Morgan Stanley	Bonds	\$ 2,472,898.60
b.	Mortgage-backed Securities	\$ -
c.	Debentures	\$ -
d.	Mutual Funds (Corporate Bonds)	\$ -
Total Corporate Bonds (at fair value)	The sum of items 3.a. through 3.d	\$ 2,472,898.60
4. Corporate Stocks	Percent of Total Assets	58.32%

**Annual Report of Policemen's and Firemen's Pension and Relief Funds
to the Municipal Pensions Oversight Board
as required by WV Code §8-22-19(d)(1)(B) and §8-22-22a(a)**

Institution or Money Manager	Type of Account	Fair Value
a. Morgan Stanley	Individual Stocks Held	\$ 8,418,059.15
b.	Mutual Fund Shares (Equities)	
Total Corporate Stocks (at fair value)		\$ 8,418,059.15
Total Assets		\$ 14,434,406.86

PART II

Membership and Beneficiaries

* Please report the figures requested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of Persons, add figures for each month and divide by 12. Please round to two decimal places. An employee must have been paid for 100 hours in any month to be included in that month.

** Please report the total number of disability applications received during the fiscal year, the status of each application at the end of the fiscal year, the total applications granted and denied, and the percentage of disability benefit recipients to the total number of active members of the fund. This requirement satisfies §8-22-23a(a) of the WV Code if the report is submitted to the Municipal Pensions Oversight Board prior to December 31st of each year.

Item	Avg. Monthly #
I. Members of your Pension Fund	
1. Active Members	65.08
2. Inactive Members	1.00
II. Beneficiaries Receiving Periodic Benefit Payments During Fiscal Year	
1. Retirees	62.58
2. Disability Retirees	7.00
a. Number of Disability Applications received during the fiscal year	0.00
b. Status of each Disability Application at end of fiscal year - please attach separate sheet with details	
(1.) Disability Applications Approved during Fiscal Year	0.00
(2.) Disability Applications Denied during Fiscal Year	0.00
3. Percentage of Disability Benefit Recipients to the Total of Active Members in the fund	10.76%
4. Survivors (of Deceased Members) Drawing Benefits	11.00

REGULAR MEETING October 6, 2015: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, October 6, 2015 at 7:01 p.m.

PRESENT: City Manager Jeff Mikorski, City Clerk Linda Tucker, Mayor Marti Shamberger, City Attorney Ryan Simonton, Assistant City Manager Glen Kelly and Council Members: Deputy Mayor Bill Kawecki, Wes Nugent, Jenny Selin, Jay Redmond, and Nancy Ganz. (Ron Bane was absent)

The meeting was called to order by Mayor Shamberger.

APPROVAL OF MINUTES: Minutes from the September 15, 2015 meeting were approved as printed.

CORRESPONDENCE: Mayor, Marti Shamberger acknowledged several Proclamations: National Substance Abuse Prevention Month; Domestic Violence Awareness Month; Fire Prevention Week; General Aviation Appreciation Week; Arbor Day; Mayor Marti Shamberger also announced The National Sexual Violence Resource Center Visionary Voice Award to Larry Hasley from the Morgantown Police Department.

UNFINISHED BUSINESS: None

BOARDS AND COMMISSIONS: City Clerk, Linda Tucker informed Council that Deputy Mayor Kawecki, now has majority of the members for the Morgantown Housing Advisory Commission. City Clerk requested a Special Meeting to interview candidates on October 20th, 2015 at 6:00 pm. Council approved by unanimous consent to move forward with the Special Meeting. The City Clerk will then advertise to fill the position for a realtor. City Clerk updated Council on the rest of the positions that are being advertised: Board of Zoning, Morgantown Utility Board, Planning Commission, and Sister Cities.

PUBLIC PORTION:

Mayor Shamberger declared the Public Portion open.

Mark Brazaitis, 734 Courtney Avenue, spoke on behalf of the Southpoint Neighborhood Association, South Hills and South Park and indeed for all of Morgantown. He is honored to present several specific suggestions to fulfill the vision of the Morgantown Comprehensive Plan in relation to the forest. Our Council Members and City Manager were given a number of suggestions related to grants the city could apply for in order to buy land from landowners and maintain it as public space. He is submitting them again with several additions. The WVU Law School provides a service to help cities apply for grants and also the state organizations that do the same. Passing a park and recs fee would be a step in the right direction. He feels that Morgantown has an excellent economic resources it could and should tap into. The Morgantown Comprehensive Plan designates the area in question as "reserve" land and the County is even stronger. Mark suggests that using the land as a visionary recreation space and the City should keep half of the forest green. Another is the Morgantown Ice Area that nets up to \$200,000 per year and a state-of-art recreation facility which already has a promise of financial support from WVU could easily quintuple this at a net of \$1 million a year and is not an unreasonable ambition. If this is not this particular facility, it could be something similar with potential partners including the county, state, WVU, and private benefactors. He mentions that as a private citizen we can continue to offer suggestions to our City about how to go about finding and applying for the grants. **(Exhibit A)**

Toni Christini, 931 Southpoint Circle, spoke about the crisis of demographics, planning, and finance that is crashing into Morgantown and the city around. He mentions that the Ordinance that was brought up at the COW Meeting last week was not posted on the webpage nor was it brought up here tonight. He also thinks that a \$2.00 fee would be more appropriate than a \$3.00 fee. There are several City

Council members that are for the Parks & Rec. Ordinance and others who have not said if they are for it or not. Why? If you do not vote for this you will be likely increasing the loss of the green space for the extremely unpopular result of a flood traffic through your neighborhoods. Morgantown needs to fulfill the legacy in which they have built a good foundation and acts of the Parks & Recreation component of the proposed Ordinance that can make a great contribution to that legacy in this unrepresented time.

Trevor Rudy, 914 Southpoint Circle, highlighted key concerns of the neighborhoods in Southpoint Circle, South Park, and South Hill. First point being is safety which accesses to Buckhannon that has been proposed in the development and that it is current position is extremely dangerous and increasing volume of traffic in a neighborhood that is livable and walkable and putting that many cars on the road is asking for unfortunate tragedy and some point and time. He also mentions another concern about the waste water run-off and asks if the City can work with MUB to ensure that the run-off is appropriately managed and that it does not impact the natural quality of life in Southpoint Circle. The last concern he has is if the City can look into the City's Wards and Boundaries to see if they can accomplish the land within the City limits which would clearly provide an opportunity for Zoning in which would help protect the quality of life the neighborhoods have.

Mike Callen, 1420 Western Avenue, spoke about the economic statistics that relates to the area and specifically the one in particular that related to the user fee and that is more than one quarter of our local workforce comes from out of the area. They have no means of supporting the infrastructure and feels that this is an untapped resource and when you have more than a quarter of our workers that have no basis to obtain any support to support our economy and the quality of life and he feels that is one factor that would do well for a user fee.

James Giuliani, 256 Prarie Avenue, spoke in reference to an application that he submitted for an accessory dwelling in which was administratively denied by the Planning Department. His only choice now is to appeal to the Board of Zoning Appeal and it will be held on October 12th, 2015 at 6:30 pm to appeal the decision. He has been coming to the City Council meetings now since June 2014 requesting help for himself and his neighbors on a problem created by the City Planner by allowing a permit to be issued for an expansion of a non-conforming use. He states that this is very important to him and he feels that the public needs to be aware of the meeting that will affect everyone. **(Exhibit B – Also handout that was given was recorded and filed in vault)**

Kyle Haugh, 650 Price Street, spoke in reference to the user fee. He is opposed to the fee and expressed concern about the citizen that earns a lower wage and the potential burden this would place on them. He also mentions that most of the roads in the city are state roads and some people who come to work in the city does not take city roads. He does mention to Council that maybe they should look at this user fee again and try to come up with something else besides all city employees to pay this.

John Miles, 138 Wagner Road, commented on a previous person who spoke saying "that renters do not pay property taxes" they do pay property taxes. He discusses the issue about the user fee and what he thinks the monies will be used for once it is obtained. He does not feel the money that will be collected will go toward the roads that need fixed and for police protection. He does mention that some of the City Council members state that if we bring in more Theatres, Art and make our recreation better, our town would be booming. Because of this situation that the city is in, he feels that the city has inadequately mis-funded money.

There being no more appearances, Mayor Shamberger declared the Public Portion closed.

SPECIAL COMMITTEE REPORTS: Councilor Selin announced that the Green Team is sponsoring 3 Community Forums that can be given to the city, City Clerk, and then to Council Members: Air Quality Forum on October 8th, Water Quality Forum on October 29th, and Recycling and Waste Forum on November

10th. Councilor Nugent and Deputy Mayor Kawecki attended a meeting in concert with Chamber of Commerce with Congressman McKinley and shared our issues about our roads and transportation and feels that Congressman McKinley has a better understanding of our desires.

NEW BUSINESS:

AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.

City Manager explained, motion by Nugent, second by Kawecki, to pass the above entitled Ordinance to second reading. Motion carried 6-0.

AN ORDINANCE ANNEXING PROPERTY OF THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS AND WEST VIRGINIA DEPARTMENT OF TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN: The above entitled Ordinance was presented for first reading.

AN ORDINANCE ANNEXING PROPERTY OF THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS AND West Virginia DEPARTMENT OF TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN.

City Manager explained, motion by Nugent, second by Ganz, to pass the above entitled Ordinance to second reading. Motion carried 6-0.

AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN: The above entitled Ordinance was presented for first reading.

AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN.

City Manager explained, motion by Selin, second by Ganz, to pass the above entitled Ordinance to second reading. Motion carried 6-0.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.

City Manager explained, motion by Ganz, second by Kawecki, to pass the above entitled Ordinance to second reading. Motion carried 6-0.

AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE SERVICE: The above entitled Ordinance was presented for first reading.

AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE SERVICE.

City Manager explained, after discussion, motion by Kawecki, second by Selin, to pass the above entitled Ordinance to second reading. Motion carried 4-2. Nugent and Redmond voted No.

A RESOLUTION APPROVING AGREEMENT WITH THE MONONGALIA COUNTY BOARD OF EDUCATION PROVIDING A SCHOOL RESOURCE OFFICER AT SOUTH MIDDLE SCHOOL: The above entitled Resolution was presented for first reading.

A RESOLUTION APPROVING AGREEMENT WITH THE MONONGALIA COUNTY BOARD OF EDUCATION PROVIDING A SCHOOL RESOURCE OFFICER AT SOUTH MIDDLE SCHOOL

City Manager explained, motion by Nugent, second by Kawecki, to pass the above entitled Resolution. Motion carried 6-0.

A RESOLUTION APPROVING EXECUTION OF DEED OF RELEASE WITH FEDERAL AVIATION ADMINISTRATION: The above entitled Resolution was presented for first reading.

A RESOLUTION APPROVING EXECUTION OF DEED OF RELEASE WITH FEDERAL AVIATION ADMINISTRATION

City Manager explained, motion by Kawecki, second by Selin, to pass the above entitled Resolution. Motion carried 6-0.

CITY MANAGERS REPORT:

New Business:

1. Agreement with West Virginia Radio Corporation

The attached agreement with the West Virginia Radio Corporation allows the trimming of a few trees along Deckers Creek in Marilla Park to allow satellite signals to reach the West Virginia Radio Corporation's dishes at their facility on Earl Core Road. Over the years, trees along the creek grew tall enough to interface with satellite signals needed for emergency broadcasting service. The Tree Board's recommendation was to allow the trimming of the trees but make sure the creek bank was protected with additional plantings and repair if any of the trimmed trees fail. I recommend Council to authorize me to sign the agreement and move the project forward.

Changes were done at the last minute and not done in time for the meeting. It will be on the next Council meeting on October 20th.

- 2.** To the person who spoke and said that there was consequences to his speaking City Manager, Jeff Mikorski stated that City Administration never has and never will look to people speaking in the public to provide information in any way for enforcement issues.

REPORT FROM CITY CLERK: No Report

REPORT FROM CITY ATTORNEY: City Attorney, Ryan Simonton reported that the Circuit Court upheld the BZA site plan for the VFW sight and he thanked everyone involved.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane: Absent

Deputy Mayor Kawecki: No Report

Councilor Nugent: Councilor Nugent noted that the MPO draft public policies are online at plantogether.org for citizens to review. Councilor Nugent then asked the City Manager to give an update for University Avenue on completion. City Manager gave an update stating that they are meeting weekly and hoping that they can meet the deadline for October 15th. Councilor Nugent then asked, with the frustration and the traffic patterns in town, is there any way that the traffic pattern can steer visitors to allow traffic to the downtown patrons?

Assistant City Manager Glen Kelly: Assistant City Manager Glen Kelly mentioned the vacant property at the Airport and stated that at this time we have two prospects which will be updated with an ADA ramp.

Councilor Selin: Councilor Selin mentioned that the citizens complained that Channel 15 is still not audible, and that City Council needs to move into their microphones. Councilor Selin commented on the user fee, stating the need to improve roads and emergency response and that we are competing with other communities. She then thanked the 16 students that helped with Good Neighbor Day. She also suggested that when we are doing the paving project that we take a photo of project before and after. Councilor Selin encourages speakers coming to council be given their voice and open dialogue.

Councilor Redmond: Councilor Redmond expressed his gratitude to all of the public speakers this

evening. Councilor Redmond mentioned that he will be voting no on the user fee not because he is against the fee, but that Council has not done their due diligence. Councilor Redmond thanked City Administration for handling concerns on the Development issues for the South Park, Southpoint, and South High neighborhood associations on their concerns on this new development.

Councilor Ganz:

Councilor Ganz noted that she looks forward to the results of the user fee and funds for other sources that will prevail. Councilor Ganz thanked the citizens that came to council and gave their input. She then reported that on October 8th at 6:30 pm. at the Health Department there will be a public hearing for Prestige Capitol Ventures by the State Alcohol Beverage Control Administration.

Mayor Shamberger:

Mayor Shamberger noted that she has had a busy week; there were WVU 30 Students in her Ward for Neighborhood Day cleanup day; attended the Women of Color luncheon; saw "Batter not Broken" at the Met Theatre; attended Chinese Autumn Festival; spoke at the WV Wellness Conference. She reminded citizens that if garbage cans are left out, call the Police Department or Code and if you see street lights out, report those to Mon Power. She then mentioned an idea to Council that maybe next year there be a Diversity Weekend Celebration.

ADJOURNMENT: There being no further items of business or discussion, motion by Selin, second by Ganz to adjourn. Motion carried by unanimous consent at 9:00 p.m.

City Clerk

Mayor

*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS ARE AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.

Remarks of Mark Brazaitis
Morgantown City Council Meeting
October 6, 2015

My name is Mark Brazaitis. I have been a resident of Morgantown since 2000. So have my wife, Julie, and my daughters, Annabel, and Rebecca. (Technically, Rebecca has been a resident since 2002—she was born in Mon General Hospital on the 4th of July. Annabel and Rebecca are here with me tonight because the issue about which I am about to speak affects them and all young people in our city and county.)

Thank you for allowing me to speak tonight on behalf of South Park, South Hills, and Southpoint and their neighborhood associations *and, indeed, for all of Morgantown.*

I'm honored to present to you a position paper from the three neighborhoods and their respective associations, and as signed by their presidents, Paul Steel from South Park, Dave Harshbarger from South Hills, and Bill Wesson from South Point, in favor of preserving all of the roughly .5 square miles of forest behind the Circle K. off Dorsey Avenue—or as much of it as possible—in order to ensure, in alignment with the Morgantown Comprehensive Plan and the Monongalia County Comprehensive Plan, the continued preservation of the local ecology, its environment, wildlife, woods, and green space; the safety and quality of local neighborhoods; and the overall well-being of the city and county.

It is our position that (and I will read now from the position paper):

Our position paper offers specific suggestions to fulfill the vision of the Morgantown Comprehensive Plan in relation to the forest. Members of the city council and the city manager have been informed of our position paper previously, but I am glad it is now an official part of the record.

We have offered to our city council members and our city manager a number of suggestions related to grants (federal and otherwise) the city could apply for in order to buy the land from the landowners and maintain it as public space. I submit them again here with several additions.

The WVU Law School provides a service to help cities such as ours find and apply for such grants. There are state organizations that do the same.

Passing a park and recs fee would be another extraordinarily step in the right direction.

In short: Morgantown has excellent economic resources it could, and should, tap into.

On first blush, purchasing the land from the landowners might seem like the least-realizable option we, as a city, have to resolve this situation. In fact, it's quite possibly the most realizable option. (Without question it would be the best possible outcome.)

The Morgantown Comprehensive Plan designates the area in question as "reserve" land. (The county's Comprehensive Plan is even stronger in its designation of the space as a not-appropriate-for-development zone.) In other words, the city's smart blueprint for growth confirms what we've all been saying: This land is best left the way it is or used as public space. The Comprehensive Plan is the city's implicit (and even explicit) promise to all of us. The landowners have expressed a willingness to sell the property, and it would be contradictory to Morgantown's Comprehensive Plan if the city did not do everything it could to secure the necessary grants to buy the land—or as much of it as possible.

It's the city manager's job—and the city manager is certainly qualified to perform this job—to do what is in the city's best interests. Clearly, because of the Comprehensive Plan, and because of the detailed and thoughtful position paper from three major neighborhoods in the city, it is in the city's best interest to buy the land for use as a public space.

I have suggested using the land as a visionary recreation space. The city could keep the upper half of the forest green—create picnic areas and refine the forest's existing nature trails. It could use the bottom half of the property to realize what our community has long been planning: the building of a public recreation facility, which would encompass a year-long ice rink and an indoor swimming pool.

The charming but outdated Morgantown Ice Area nets upwards of \$200,000 a year. A state-of-the-art recreation facility, which already has a promise of financial support from WVU, could easily quintuple this. A net of \$1 million a year isn't an unreasonable ambition.

If it isn't this particular facility, it could be something similar, with potential partners including the county, the state, WVU, and private benefactors.

As private citizens, we can continue to offer suggestions to our city about how to go about finding and applying for grants. We can solicit private contributions as well. But it's up to our city manager to do his job and work vigorously and creatively to apply for and win grants that will make a land purchase possible.

It's definitely possible. And what seems somewhat daunting now will one day, when the land becomes public (and perhaps becomes an extraordinary recreation space with picnic areas and trails), seem both visionary and obvious.

Everyone can win here. The landowners can secure a reasonable return on their investment. The city can honor its Comprehensive Plan and secure a remarkable green space (home to two endangered species). All of us can breathe a little fresh air and enjoy an invigorating walk in the woods.

This is a decision not just for tomorrow but for the next century. We are a "great small city." Let's keep this land the way the city has designated it—and thereby remain great.

Possible funding sources for purchase of forest behind Circle K off Dorsey Avenue:

West Virginia Outdoor Heritage Conservation Fund:

[:http://www.wvcommerce.org/resources/conservation/ohcf/default.aspx](http://www.wvcommerce.org/resources/conservation/ohcf/default.aspx)

West Virginia Land and Conservation Fund:

<http://www.wvcommerce.org/people/communityresources/infrastructure/landandwaterconservationfund/default.aspx>

The Conservation Trust:

<http://www.nationalgeographic.com/explorers/grants-programs/conservation-trust/>

The Land and Water Conservation Fund:

<http://www.fs.fed.us/land/staff/LWCF/>

U.S. Forest Service Grants:

<http://www.fs.fed.us/working-with-us/grants>

Bureau of Land Management:

http://www.blm.gov/wo/st/en/prog/energy/cost_recovery_regulations/pre-application.html

Parks and Recreation Funding (via The Grant Helpers.com):

<http://www.thegranthelpers.com/municipal-grants/parks---recreation-grants>

Partnership for Sustainable Communities:

<http://www.sustainablecommunities.gov/>

The Claude Worthington Benedum Foundation:

<http://www.benedum.org/programs/community.shtml>

An overview of Federal Grants: <http://www.grants.gov/>

WVU College of Law Land Use and Sustainable Development Law Clinic:

<http://landuse.law.wvu.edu/>

NEIGHBORHOODS' POSITION PAPER ON MAJOR SOUTH MORGANTOWN DEVELOPMENT

The position of several Morgantown neighborhoods - South Hills, South Park, and Southpoint - in relation to a massive new development project proposed to stretch from East Oak Grove Cemetery and the Circle K on Dorsey Avenue to and along the border of South Park to South Hills and Southpoint neighborhoods is as follows:

In firm alignment with the vision and blueprint of Morgantown's Comprehensive Plan, these several city neighborhoods are committed to protecting and promoting:

- 1) the local ecology, its environment, wildlife, woods, and green space;
- 2) the safety and quality of life of the local neighborhoods;
- 3) and the overall well-being of the city and county.

The development project would grossly impact adjacent neighborhoods and the city as a whole. We are committed to maintaining and improving city livability: by minimizing neighborhood through traffic, by maximizing safety and walkability, by preserving the environment, by protecting wildlife, by providing open space for healthy exercise and enjoyment, by boosting social and economic well-being in alignment with Morgantown's vision and blueprint. Such commitment has the potential to raise the bar for maintaining and improving quality of life in both longstanding neighborhoods and in new areas of the city.

The detailed position and priorities of South Park, South Hills, and Southpoint neighborhoods are as follows:

1) ECOLOGY & QUALITY OF LIFE

that the city and county co-operate to protect and promote the local ecology and the neighborhoods' quality of life through a) public purchase and set-asides of as much of the existing wilderness as possible, especially along the borders of South Park, South Hills, and Southpoint, and through b) annexation of the greater development project area to provide a revenue stream for land purchase, and to zone it appropriately.

2) SAFETY & QUALITY OF LIFE

that the city, county, and state co-operate to protect and promote the safety and quality of life of the neighborhoods by responsible traffic management that allows no new intersection or traffic direct from the development project to Buckhannon Avenue, nor to any local neighborhood road: that is, the city, county, and state must prohibit any traffic direct through the adjacent neighborhoods of South Park, South Hills, Southpoint; all new subdivision traffic must proceed via the collector/arterial road that is Dorsey Avenue, which itself connects directly to the arterials Greenbag Road and University Avenue.

3) CITY & COUNTY WELL-BEING

that the city and county co-operate to annex and zone the development project and surrounds, thereby providing the city a major new revenue stream that with deliberate financing may be used to purchase greenbelts adjacent to the existing neighborhoods to help preserve the local ecology, the environment and wildlife, and to lessen the damage done to Morgantown's status as a green and healthy and livable city.

SUMMARY OF IMPERATIVES

In regard to the massive new development project, the key priorities and imperatives of the several

neighborhoods are for the local ecology, for neighborhood safety and neighborhood quality of life, and for city and county well-being. It is the emphatic and carefully considered view of the several neighborhoods that these imperatives must be addressed 1) by public purchase and stewardship of as much of the development land as possible; 2) by annexation and zoning of the greater development area; 3) and by the responsible management of traffic, i.e., a prohibition against access to South Park, South Hills, and Southpoint via any road but the collector/arterial road that is Dorsey Avenue with its direct connections to larger arterials.

NEIGHBORHOOD IMPERATIVES ALIGNED WITH MORGANTOWN COMPREHENSIVE PLAN

The Morgantown Comprehensive Plan's "core elements [of] Land Management, Transportation, Environment, Neighborhoods and Housing, Community Facilities and Services, and Economic Development" are met here by the several neighborhoods' efforts to forge collaboration between the public and the city and county governments and business interests; and by the neighborhoods' advocacy of protecting the environment, wildlife, and green space; and by the neighborhoods' advocacy of proper, safe, and livable traffic management, as well as by the neighborhoods' equally strong advocacy of annexation, which enables zoning with its many benefits for new and existing housing and land management, and which will improve city finances for attending to local social needs, including ecological health, recreational opportunities, preservation of open space, quality infrastructure, expanded social services, and much more.

William Wasson
Pres. South Point Neighbors Association

Paul B. Stal
Pres. South Park Association Neighbors

David Starshlager
South Hills Association
I recognize this is private
land in the county w/ limited
restrictions, but hope legally
do what is best for the
city.

**Attention to the Citizens of Morgantown and the
City Council**

I am here tonight to make you aware of an application I made for an accessory dwelling, which was administratively denied by the Planning Department and the City Planner who is only the member of the Planning Department. This has now left me no other opportunity but to make an appeal to the BZA.

There was a brand new accessory dwelling built only 120 ft. from my house. It was built by only obtaining a building permit and nothing else was required. After much thought about this I decided to apply for my own permit to improve my already existing pre-Civil War home with its own accessory dwelling for an existing kitchen and guesthouse. I would love to improve upon this amazing building by adding modern heating and cooling, to improve the kitchen, and add a bath with modern plumbing. It is important to note that the Alexander Wade House is a National Landmark and is an important historical structure that deserves consideration of this important project (our home is located at 256 Prairie Ave. and the other home is 200 Prairie Ave.

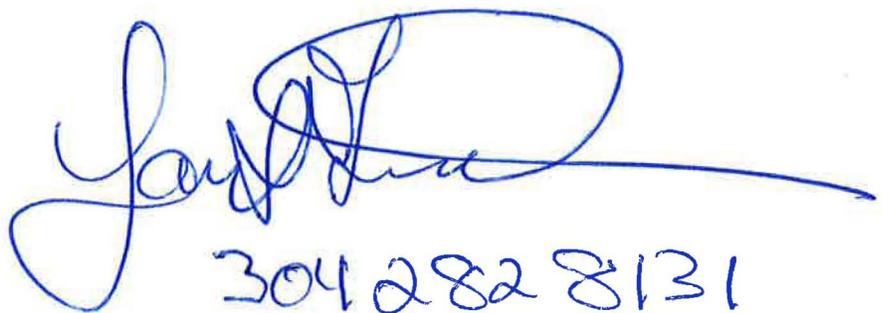
The other party was simply awarded a permit and built, as they wanted. Even though, this was a non-conforming dwelling in a B4 District not a residential one. Whereas, I have been required to pay legal fees, spend time and energy, and to bear the burden of proof when I cannot get the same rights and privileges as my neighbor (only 120 ft. away).

I have now been coming to the City Council since June 2014 requesting help for myself and my neighbors on the problem created by the City Planner by allowing a permit to be issued for an expansion of a non-conforming use. Under the Morgantown Zoning Ordinance all non-conforming uses

which want to be increased have to go before the BZA for approval. I have spent a lot of time and energy to do the right thing by and for the community. I am here tonight to let the City Council and the public know about a meeting being held on October 12, 2015 at 6:30 pm to appeal the City Planner's administrative decision before the BZA for an accessory dwelling use.

Accessory dwellings exist all around the U.S. and most feel they improve our communities. The American Planning Association and the AARP are supporters of these dwellings (please see hand outs.) *Filed in Archives Vault*

It is very important to me that the public is aware of this meeting as it affects all of us. There has been very little notice informing citizens of this meeting. So tonight I want to bring this issue to your attention. It is time for favoritism and incompetence to end, and for everyone to have an equal voice no matter how much money, connections, or power they have. I have gone to extremes to bring this issue to the city's attention. I beg you to ensure that all citizens have equal opportunity to enjoy their homes.



304 282 8131
alexjewela
comcast.net.

Boards & Commissions Available Positions

<u>Board/Commission</u>	<u>Vacancy(s)</u>	<u>Name of Applicants</u>	<u>Res./Non Res.</u>	<u>Ward</u>	<u>WD. Aval.</u>	<u>Other</u>
Board of Zoning Appeals	2	Leanne Cardoso	Resident			Advertise
		James Shaffer	Resident			Advertise
Morgantown Housing		Harrison Case	Resident	2		Special Mtg
		Rachel Fetty	Resident	1		Interview
		Christopher Ham	Resident	2		10/20/2015
		Terry Kelly	Resident	1		At-Large Vac.
MUB	1	John Ganz	Resident			Advertise
Planning Commission	3	Carol Pyles	Resident	7		
		Mike Shuman	Resident	5		Advertise
		William Petros	Resident	4		Advertise
						Advertise
Sister Cities	2	Lola Contreras	Resident	4		
						Advertise
BZA, MUB, PLANNING deadline for advertising 11/15/15						City Clerk
* Urban Landscape is looking at making some membership changes.						
						City Manager

Updated 10/8/15

****Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, that they will not interview; the City Clerk will check with Council before scheduling a Special Meeting.***

****BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.***

Morgantown

Request ID: 30907

Request Form: Volunteering for City Boards and Commissions
Received: Tuesday, August 04, 2015
Status: Completed
Priority: Normal
Assigned To: Heather Carl

Contact Details

From: Lola Contreras
Email: contreras.lola@gmail.com
Telephone: 304-216-3441
Address1: 323 Rotary St.
Address2:

City: Morgantown

State: WV

Zip Code:
26505

Pref. Method of Response: E-Mail

Request Address

Number:

Direction:

Street:

Type:

Apt:

City:

State:

Zip Code:

Questions and Answers

Are you a Morgantown resident?:

Yes

If Yes, how many years have you lived in the City of Morgantown?:

12

In which City Ward do you live?:

Not Sure Fourth Wd

Who is your employer? (If retired, answer "retired"):

Fairmont State University

What type of business are, or were, you employed in?:

Education

Do you have any professional certifications or licenses?:

Yes, substitute teacher, provisional certified Spanish teacher (TX).

Do you have any pertinent special interests?:

I have been involved in a number of

international/cultural events such as:

- Hispanic Heritage Month (LASO - WVU)
- 5 de Mayo (fundraising event for WV CIP)
- Chispa/Spanish festivals at public schools

On which Board or Commission(s) are you interested in serving?:
Sister Cities Commission

Are you a Morgantown resident?:

If Yes, how many years have you lived in the City of Morgantown?:

In which City Ward do you live?:

Who is your employer? (If retired, answer "retired"):

What type of business are, or were, you employed in?:

Do you have any professional certifications or licenses?:

Do you have any pertinent special interests?:

On which Board or Commission(s) are you interested in serving?:

Staff Activities

The status of the request was changed from Active to Completed. on 8/4/2015 at 3:10 PM

Public Activities

Request was successfully submitted. by EXEC EXEC on 8/4/2015 at 12:48 PM

AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.

WHEREAS, the Common Council of the City of Morgantown intends to protect residents and visitors from the dangers created by uncontrolled fires and to prevent the creation of unnecessary dangerous situations in violation of the City’s Fire Prevention Code; and

WHEREAS, the City has created a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department which employ Fire Marshals and Deputy Fire Marshals to enforce the Fire Prevention Code; and

WHEREAS, the prevention and extinguishing of fires and dangerous conditions related to fire within the City will be promoted by granting limited powers of arrest to Fire Marshals and Deputy Fire Marshals to ensure those who are responsible for such fires and conditions or who are preventing effective extinguishing and prevention of fires are apprehended; and

WHEREAS, the powers to be exercised by Fire Marshals and Deputy Fire Marshals pursuant to this ordinance are similar to those exercised by the State Fire Marshal’s office pursuant to *W. Va. Code* § 29-3-12 and are limited to enforcement of laws relating to preventing and extinguishing fire, specifically regulating the scene of a fire and certain violations of Morgantown’s Fire Prevention Code;

WHEREAS, pursuant to *W. Va. Code* § 8-15-1, the City has “plenary power and authority to provide for the prevention and extinguishment of fires,” but is not specifically granted by the text of West Virginia Code Chapter 8, Article 15, the authority to grant firefighters arrest powers when exercising its authority to prevent and extinguish fires; and

WHEREAS, pursuant to the authority granted to the City of Morgantown as a Home Rule Municipality under West Virginia Code § 8-1-5a, City Council is authorized to grant limited arrest powers to Fire Marshals and Deputy Fire Marshals at the scene of fires and to promote effective enforcement of specific provisions of the Fire Prevention Code;

NOW THEREFORE, the City of Morgantown hereby ordains that Sections 1505.01 and 1511.02 of the City Code be amended as follows:

1505.01 OBEDIENCE TO ORDERS AT FIRES.

Whoever shall be present at a fire shall be subject and obedient to the orders of the Chief of the Fire Department, the Captain or to the orders of any ~~fireman~~ firefighter, Fire Marshal, Deputy Fire Marshal, or police officer in any matter relating to the extinguishing of fire and the removal and protection of property and maintenance of order. Whoever neglects or refuses to obey such orders, shall be guilty of a violation of this section. All police officers, Fire Marshals, and Deputy Fire Marshals shall have the power to arrest any person so neglecting or refusing to obey any such

lawful orders, to hold him in custody until after the fire shall have been extinguished, and then to take the person before the ~~Police Judge~~ Municipal Court Judge or appropriate municipal court officer of the City to be dealt with according to law.

1511.02 CODE ENFORCEMENT.

(a) The Fire Chief shall be responsible for the enforcement of the City of Morgantown Fire Prevention Code. To assist in the performance of the responsibilities and duties placed upon the Fire Chief, a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department are hereby created. Both Bureaus shall operate under the supervision of the Fire Chief, who shall designate fire officials of the Fire Department as Fire Marshals for each. The Fire Marshals shall report to the Fire Chief, shall be the administrators of the Bureau of Fire Prevention and Bureau of Fire Investigation and shall be responsible for administration and enforcement of the Fire Prevention Code. The Fire Chief may also designate members of the Fire Department, who have met the qualifications and training as set forth in ~~either Morgantown Fire Department Code enforcement S.O.P. #6 or Fire Investigation S.O.P. #8~~ S.O.G. 308.01 as Deputy Fire Marshals. The Fire Chief is authorized, if he/she deems it necessary, to create additional bureaus and appoint additional Fire Marshals. The Fire Marshals and Deputy Fire Marshals are hereby empowered to enforce the Fire Prevention Code and to cite for any Fire Code violations upon observation of each such offense. Violations for which citations may be issued by the Fire Marshals and Deputy Fire Marshals include, but are not limited to:

- (1) Locked or blocked fire exits.
- (2) Overcrowding in violation of posted occupant loads.
- (3) Failure to maintain occupant load posting.
- (4) Blocking or obstructing designated fire lanes.
- (5) Outdoor burning without a State forester permit, when such a permit is required.
- (6) Burning of materials not authorized in the State burning permit.
- (7) Having a bonfire or other similar fire without approval of the Morgantown Fire Department.
- (8) Refusing to cease burning of materials when ordered to do so by proper authority.
- (9) Tampering with any portable or fixed fire extinguishing system or device or any fire warning system.
- (10) Illegal burning.
- (11) Malicious burning.
- (12) Obstructing a Fire Marshal.
- (13) Failure to Comply with Orders.
- (14) Any violation of the Morgantown Fire Prevention Code, West Virginia State Fire Code, or any other fire codes or standards adopted by specific reference by the State of West Virginia.

(b) Fire Marshals and Deputy Fire Marshals are hereby empowered to make arrests anywhere within the City of Morgantown of any person charged with the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders; and when a witness to the

perpetrations of these offenses, to make arrests without warrant; or to detain any persons suspected of the commission of these offenses for investigatory purposes.

(c) Fire Marshals and Deputy Fire Marshals are hereby empowered to make complaint in writing before the Municipal Judge or appropriate municipal court officer and procure a warrant for the arrest of any offender of the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders. Fire Marshals and Deputy Fire Marshals may execute any summons or warrant issued by the Municipal Judge or appropriate municipal court officer for the offenses of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders upon the offender within the City of Morgantown. Any return by a Fire Marshal or Deputy Fire Marshal showing the manner of executing the warrant or summons has the same force and effect as if made by a police officer.

(d) The Fire Chief, who is responsible for the enforcement of the Fire Prevention Code, may revoke or rescind, at any time, any Fire Department member's enforcement powers when, in the opinion of the Fire Chief, these powers have been abused or improperly enforced.

(e) Nothing within this article shall prevent a Fire Marshal or an Assistant Fire Marshal from seeking injunctive relief against the responsible party at any time once any Code violation is noted.

(b) (f) There is hereby established a Morgantown Fire Prevention Board which shall ultimately be responsible for the orderly enforcement of the Fire Prevention Code. The membership of the Board shall be composed of the City Manager, who shall be its permanent chairperson, the Chief of the Fire Department and the City Engineer. All actions contemplated by the City's Fire Marshal or Deputy Fire Marshals shall first be reviewed by the Fire Chief who at his discretion may delay any such action until such time as the matter has been presented to the Board for deliberation and recommendation. The Board shall prescribe its own rules and regulations governing its meetings and proceedings, and may, from time to time promulgate appropriate rules and regulations, not otherwise inconsistent with the ordinances of the City or the statutes of the State, which the Board may deem necessary for the orderly enforcement of the Fire Prevention Code. The Board shall have the right to conduct appeal hearings pursuant to Section 1511.05.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**AN ORDINANCE ANNEXING PROPERTY OF THE WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS AND WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE
BOUNDARIES OF THE CITY OF MORGANTOWN**

WHEREAS, West Virginia Code section 8-6-4 permits a municipality to order annexation of additional territory by ordinance without a vote if a majority of freeholders and qualified voters petition for such annexation; and

WHEREAS, a majority of freeholders in the territory subject of the attached "Petition for Annexation," which is incorporated in this Ordinance by reference, have petitioned for annexation and no qualified voters, as defined by *W. Va. Code* § 8-6-4, are present in the territory; and

WHEREAS, the City has enumerated and verified the total number of eligible petitioners in each category and is satisfied that the petition is sufficient in every respect and that the territory to be annexed is contiguous to the current municipal boundaries;

NOW, THEREFORE, the City of Morgantown hereby ordains as follows:

- (1) That the territory described in the Petition for Annexation, being Parcel 19, and part of Parcels 18.5 and 20, of Tax Map Number 4 in Morgan District, Monongalia County, West Virginia, and a parcel consisting of 2.12 acres, more or less, owned by the West Virginia Department of Transportation, Division of Highways, and not assigned a Map and Parcel designation, all as more fully described in the Petition for Annexation and exhibit thereto, shall be annexed into the City of Morgantown;
- (2) That the City Clerk is directed to enter upon the journal of the City the finding that the Petition for Annexation is sufficient in every respect and forward a certificate to that effect to the County Commission of Monongalia County, West Virginia, pursuant to *W. Va. Code* § 8-6-4(g), notifying the Commission that it shall enter an order as described in *W. Va. Code* § 8-6-3 describing the annexation of the additional territory to the corporate limits of the City of Morgantown.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

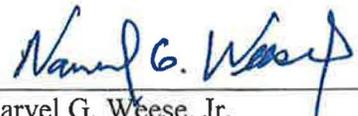
PETITION FOR ANNEXATION

The undersigned, being the freeholder of the identified property situated within the area of proposed annexation, and not being a qualified voter of the territory or a signator to a qualified voters' petition for annexation of the territory, hereby petitions the City Council of the City of Morgantown, West Virginia, to annex the territory described in this Petition and shown and described on the attached map or plat, as required by law, pursuant to West Virginia Code Chapter 8, Article 6, Section 4.

<u>Owner</u>	<u>District</u>	<u>Tax Map No.</u>	<u>Parcel No.</u>	<u>Signature</u>
West Virginia University Board of Governors	Morgan	4	p/o 18.5	
West Virginia University Board of Governors	Morgan	4	p/o 20	
West Virginia University Board of Governors	Morgan	4	19	
WVDOH 2.12 ac.	Morgan	n/a	n/a	n/a

Narvel G. Weese, Jr., Vice President of Administration and Finance, on behalf of the West Virginia University Board of Governors on behalf of West Virginia University, the freeholder of the parcels identified as Morgan District Map 4, Parcels 18.5, 19, and 20 in the foregoing "Petition for Annexation," hereby petitions the City of Morgantown for annexation of the portions of the parcels identified in the table and situated within the area of proposed annexation as described on the attached exhibit.

West Virginia University Board of Governors on behalf of West Virginia University

By: 
 Narvel G. Weese, Jr.

Its: Vice President of Administration and Finance

LEGAL DESCRIPTION
MAPLE DRIVE PROPERTY
4.20 ACRES

BEGINNING AT A 5/8" IRON BAR FOUND, SAID BAR BEING A SOUTHWESTERLY CORNER OF LAND NOW OR FORMERLY OWNED BY WEST VIRGINIA BOARD OF GOVERNORS, (DEED BOOK 1232 PAGE 74) AND BEING 299.80 FEET LEFT AND AT A RIGHT ANGLE TO WV STATE ROUTE 705 CENTERLINE AT STATION 151+00, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE WITH SAID WEST VIRGINIA BOARD OF GOVERNORS S 10° 02' 12" W 87.45 FEET TO A POINT;

THENCE N 74° 04' 30" E 104.36 FEET TO A POINT;

THENCE N 51° 36' 06" E 103.83 FEET TO A POINT;

THENCE N 53° 17' 58" E 114.26 FEET TO A POINT;

THENCE S 82° 45' 28" E 58.64 FEET TO A POINT;

THENCE S 41° 12' 04" E 55.21 FEET TO A POINT;

THENCE S 41° 03' 41" E 135.59 FEET TO A POINT;

THENCE S 20° 13' 06" E 62.09 FEET TO A POINT;

THENCE S 15° 48' 05" W 157.43 FEET TO A POINT, SAID POINT BEING THE SOUTH EAST CORNER OF LAND NOW OR FORMERLY OWNED BY WEST VIRGINIA BOARD OF GOVERNORS (DEED BOOK 1240 PAGE 322) AND BEING 150.36 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 155+40.49, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE THROUGH SAID STATE ROUTE 705 R/W WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 75.19 FEET AND AN ARC LENGTH OF 128.13 FEET AND HAVING A CHORD BEARING S 61° 22' 42" W 113.18 FEET TO A POINT 64.84 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 155+66.35, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 69° 44' 21" W 131.49 FEET TO A POINT 64.75 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 153+36.23, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 72° 16' 59" W 90.81 FEET TO A POINT 64.74 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 152+49.04, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 75° 59' 13" W 105.26 FEET TO A POINT 64.75 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 151+48.31, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 80° 06' 16" W 108.37 FEET TO A POINT 64.67 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 150+44.42, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 84° 00' 38" W 168.74 FEET TO A POINT 62.54 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 148+77.85, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE WITH A CURVE TO THE LEFT HAVING A RADIUS OF 265.00 FEET AND AN ARC LENGTH OF 144.46 FEET AND HAVING A CHORD BEARING N 37° 11' 41" W 142.68 FEET TO A POINT 166.00 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 147+79.32, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 78° 27' 15" E 126.49 FEET OT A POINT;

THENCE N 84° 39' 22" E 121.14 FEET TO A POINT;

THENCE N 20° 48' 55" E 71.96 FEET TO A POINT 299.80 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 150+30, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE S 81° 15' 23" E 82.72 FEET TO THE POINT OF BEGINNING, CONTAINING 183,398 SQ. FT. OR 4.20 ACRES MORE OR LESS.

BEING PART OF PARCELS 18.5, 19 AND 20 OF TAX MAP 4 IN MORGAN DISTRICT MONONGALIA COUNTY WEST VIRGINIA.

AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN

WHEREAS, West Virginia Code section 8-6-4 permits a municipality to order annexation of additional territory by ordinance without a vote if a majority of freeholders and qualified voters petition for such annexation; and

WHEREAS, all freeholders in the territory subject of the attached "Petition for Annexation," which is incorporated in this Ordinance by reference, have petitioned for annexation and no qualified voters, as defined by *W. Va. Code* § 8-6-4, are present in the territory; and

WHEREAS, the City has enumerated and verified the total number of eligible petitioners in each category and is satisfied that the petition is sufficient in every respect and that the territory to be annexed is contiguous to the current municipal boundaries;

NOW, THEREFORE, the City of Morgantown hereby ordains as follows:

- (1) That the territory described in the Petition for Annexation, being Parcels 19.4, 19.5, and 19.7 of Tax Map Number 7 in Morgan District, Monongalia County, West Virginia, as more fully described in the Petition for Annexation and exhibit thereto, shall be annexed into the City of Morgantown;
- (2) That the City Clerk is directed to enter upon the journal of the City the finding that the Petition for Annexation is sufficient in every respect and forward a certificate to that effect to the County Commission of Monongalia County, West Virginia, pursuant to *W. Va. Code* § 8-6-4(g), notifying the Commission that it shall enter an order as described in *W. Va. Code* § 8-6-3 describing the annexation of the additional territory to the corporate limits of the City of Morgantown.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

PETITION FOR ANNEXATION

The undersigned, being the freeholder of the property situated within the area of proposed annexation, and not being a qualified voter of the territory or a signator to a qualified voters' petition for annexation of the territory, hereby petitions the City Council of the City of Morgantown, West Virginia, to annex the territory described in this Petition and shown and described on the attached map or plat, as required by law, pursuant to West Virginia Code Chapter 8, Article 6, Section 4.

<u>Owner</u>	<u>District</u>	<u>Tax Map No.</u>	<u>Parcel No.</u>	<u>Signature</u>
Airpark, LLC	Morgan	7	19.4	
Airpark, LLC	Morgan	7	19.5	
Airpark, LLC	Morgan	7	19.7	

David H. Yoder, Manager of Airpark, LLC, the freeholder of the parcels identified in the foregoing "Petition for Annexation," hereby petitions the City of Morgantown for annexation of the parcels identified in the table and attached exhibit.

Airpark, LLC

By:



David H. Yoder

Its: Manager

EXHIBIT – Annexation Territory

The territory to be annexed by this Petition is the following tract or parcel of real estate, situate, lying and being in Morgan District, Monongalia County, West Virginia, more particularly bounded and described as follows, to-wit:

Parcel One – 2.93 Acres:

BEGINNING at an iron rod an original corner between land now or formerly of Kramer Turner and Millard Mayhew, and in a line of land now or formerly of Darrell J. Hoskins, thence with original Turner line, N. 6° W. 300 feet to an iron rod; thence leaving original line, N. 68° 10' E. 386 feet to a point in a private road (iron rod set 25 feet west of corner); thence with center of said private road, S. 24° 15' E. 300 feet to a point in said road (iron rod set 30 feet west of corner); tence leaving said road, S. 69° 30' W. 480.61 feet to the beginning, containing 2.93 acres, being the same, more or less, as more fully shown on a plat dated March 11, 1976, prepared by Paul W. Guseman, LLS, a copy of which is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 772, at page 418.

And being the same property conveyed as “Parcel One: 2.93 acres” in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

Parcel Two – 10.16 Acres:

BEGINNING at a point on the Eastern side of the road, at a post in the fence line; thence S. 69° 43' W. 404.70 feet to an iron pin; thence along the dividing line with the City of Morgantown, N. 4° 38' W. 1162.26 feet to a point; thence S. 79° 38' E. 471.96 feet, along the dividing line with the City of Morgantown, to a point; thence S. 0° 34' E. 933.29 feet to the point and place of beginning, as more fully set forth on a plat of said property hereby conveyed, which plat is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 806, at page 98.

And being the same property conveyed as “Parcel Two: 10.16” acres in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

Parcel Three – 13.56 Acres:

BEGINNING at an iron pin on the east side of a private road leading approximately 1/3 mile to West Virginia County Route No. 62/2, said iron pin being the point of beginning from deed from Kramer Edward Turner and Hazel Turner, his wife, to Pineview Realty, Inc., dated May 22, 1978, recorded in the office of the Clerk of the County Court of Monongalia County, West Virginia, in

Deed Book No. 806, at page 96; thence along the dividing line with said tract and residue of Hazel Turner, N. 0° 34' W. 933.29 feet to a point from which a 38 inch black oak bears S. 0° 34' E. 11.00 feet; thence along the dividing line with the City of Morgantown, DBV 365/92, S. 79° 38' E. 713.60 feet to a point at the end of a stone fence; thence along the dividing line with the City of Morgantown, DBV 368/392, S. 26° 50' E. 79.49 feet to a corner fence post; thence along the dividing line with James L. and Beverly A. Laurita DBV 778/344, S. 5° 20' 10" W. 622.16 feet to a 34 inch white oak; thence through land of Hazel Turner, passing an iron pin line reference at 69.64 feet and other iron pin line reference at 672.96 feet and the centerline of aforesaid private road at 682.96 feet, a total of S. 75° 26' 50" W. 688.52 feet to a point in the west side of road; thence along the div[id]ing line with Pineview Realty, Inc. DBV 797/103, N. 22° 42' W. 56.47 feet to a point in line of Pineview Realty, Inc. DBV 806/96; thence re-crossing road and along the div[id]ing line with said Pineview Realty, Inc., N. 69° 43' E. 18.70 feet to the place of beginning, containing 13.56 acres, more or less, as shown on a plat of survey prepared by Blaine E. Miller, LLS, recorded in Deed Book 900, at page 431.

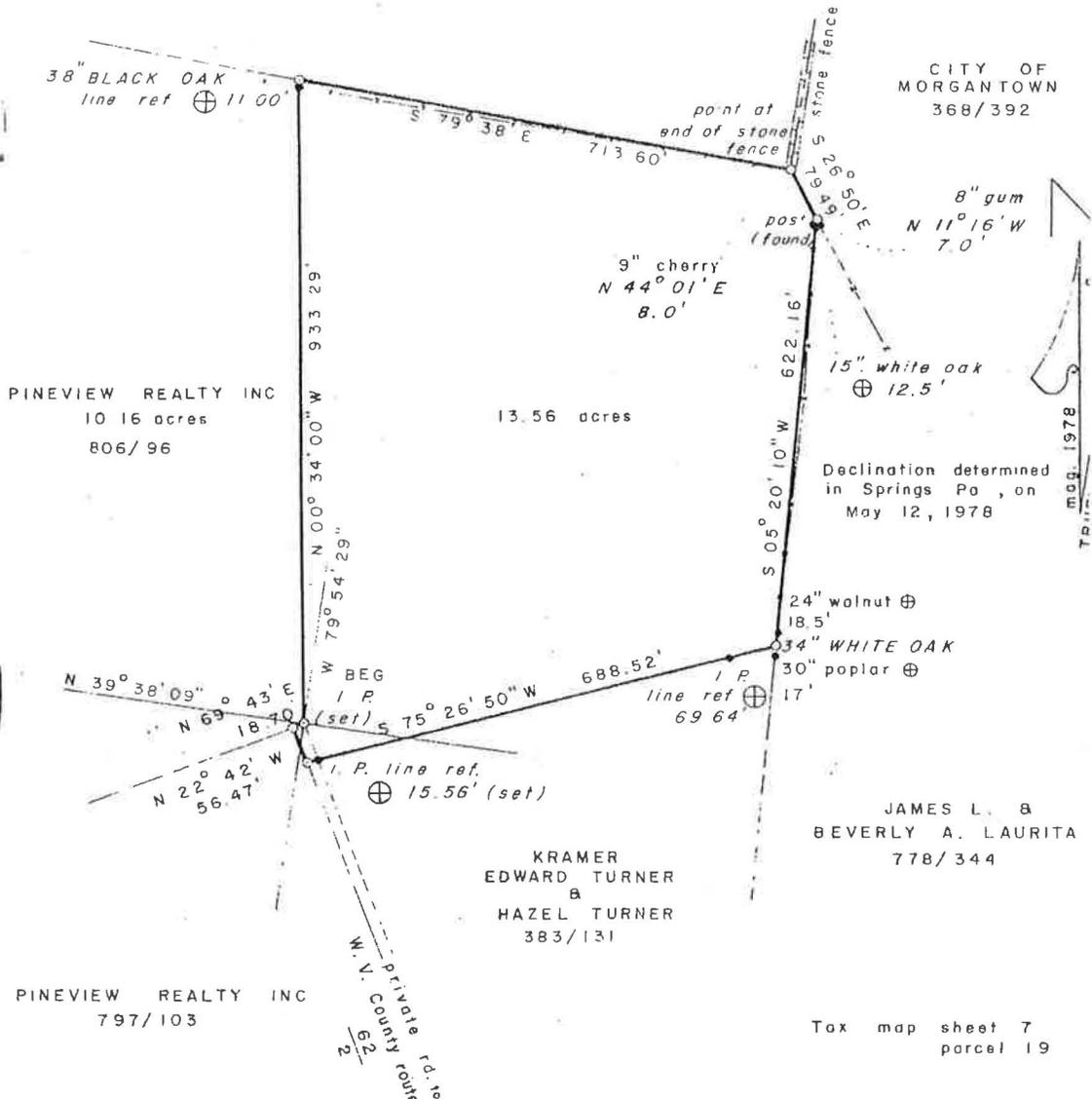
And being the same property conveyed as "Parcel Three 13.56 acres" in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

All of which real estate being the same as conveyed to East Park, LLC, a West Virginia limited liability company, from The Allegheny Development Corporation, Inc., a West Virginia corporation, by deed dated April 11, 2007, and recorded in Deed Book 1338, at page 545.

Exhibit – Annexation Map

CITY OF MORGANTOWN
365/92

CITY OF MORGANTOWN
368/392



PINEVIEW REALTY INC
10.16 acres
806/96

13.56 acres

Declination determined
in Springs Pa, on
May 12, 1978

PINEVIEW REALTY INC
797/103

JAMES L. &
BEVERLY A. LAURITA
778/344

KRAMER
EDWARD TURNER
&
HAZEL TURNER
383/131

Tax map sheet 7
parcel 19

PLAN OF PROPERTY

LOCATION — MORGAN DISTRICT, MONONGALIA CO., WEST VIRGINIA

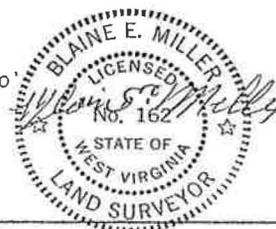
CONTAINING — 13.56 acres

TITLE — KRAMER EDWARD TURNER & HAZEL TURNER to
PINEVIEW REALTY INC.

DATE — sur. 09/01/83 B. E. M. SCALE — 1" = 200'
dwg. 03/02/84 M. J. M.

BLAINE E. MILLER, SURVEYOR

SPRINGS, PA. 15562



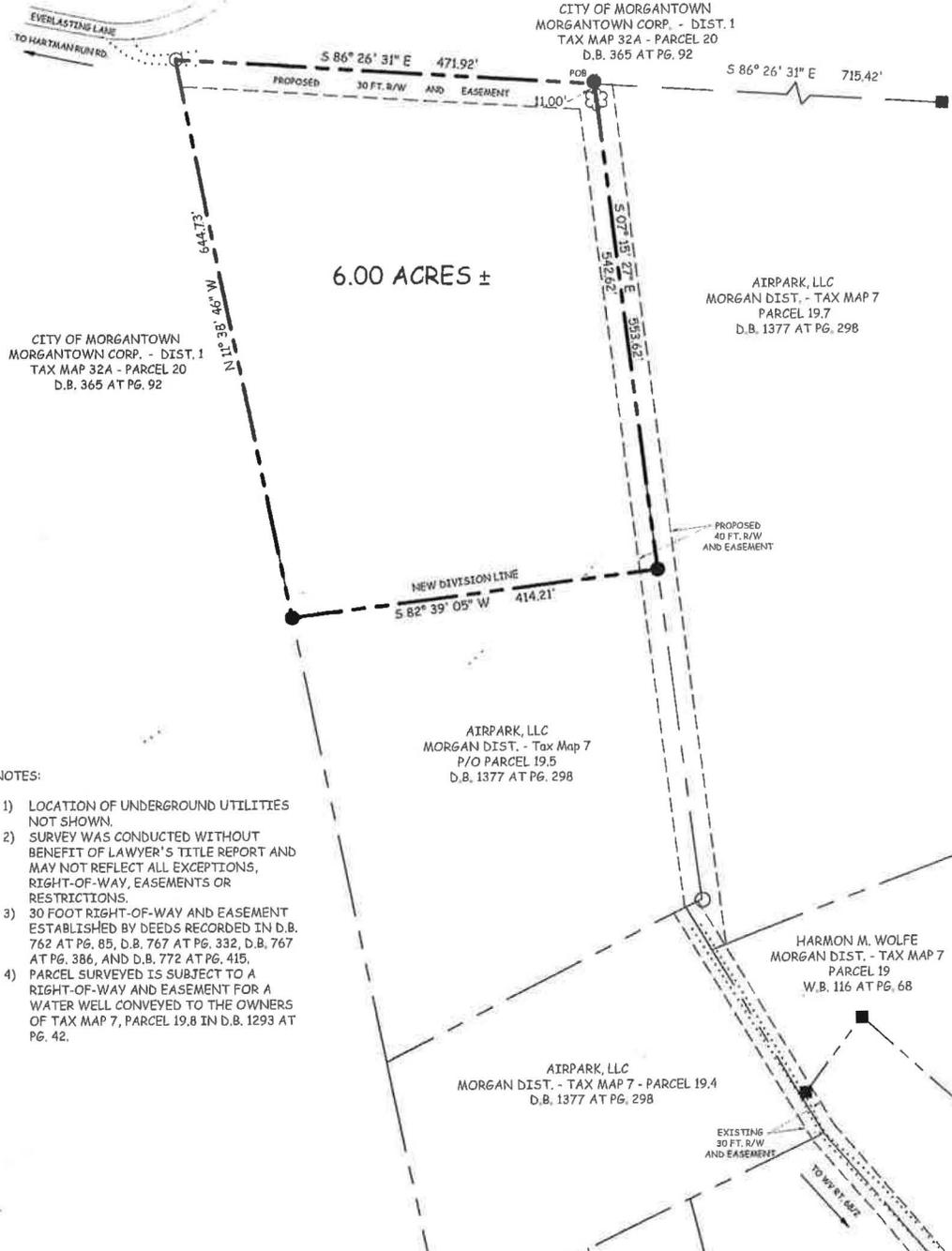
LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- RIGHT OF WAY
- EDGE OF ROAD
- APPROX. DIRT ROAD
- REFERENCE LINE

Exhibit A

- 5/8" REBAR (FND)
- 5/8" REBAR W/CAP (FND)
- TREE - 55" BLACK OAK
- POINT
- FENCE POST (FND)

Being a part of the same real estate as conveyed to Airpark, LLC, from East Park, LLC, by deed dated the 3rd day of December, 2008, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, at Page 298.



6.00 ACRES ±

NOTES:

- 1) LOCATION OF UNDERGROUND UTILITIES NOT SHOWN.
- 2) SURVEY WAS CONDUCTED WITHOUT BENEFIT OF LAWYER'S TITLE REPORT AND MAY NOT REFLECT ALL EXCEPTIONS, RIGHT-OF-WAY, EASEMENTS OR RESTRICTIONS.
- 3) 30 FOOT RIGHT-OF-WAY AND EASEMENT ESTABLISHED BY DEEDS RECORDED IN D.B. 762 AT PG. 85, D.B. 767 AT PG. 332, D.B. 767 AT PG. 386, AND D.B. 772 AT PG. 415.
- 4) PARCEL SURVEYED IS SUBJECT TO A RIGHT-OF-WAY AND EASEMENT FOR A WATER WELL CONVEYED TO THE OWNERS OF TAX MAP 7, PARCEL 19.8 IN D.B. 1293 AT PG. 42.

**PLAT OF SURVEY
MADE FOR
AIRPARK, LLC**

6.00 ACRES ±
MORGAN DISTRICT - MONONGALIA CO.
TAX MAP 7 P/O PARCEL 19.5
MORGANTOWN, WV

PATRICK E. GALLAGHER, P.S. 1352

PREPARED BY:



CTL ENGINEERING OF WEST VIRGINIA, INC.

1091 Chaplin Hill Road
Morgantown, WV 26501
Phone: 304/292-1135
Fax: 304/298-9302

510 E STREET
South Charleston, WV 25303
Phone: 304/746-1140
Fax: 304/746-1142

CONSULTING ENGINEERS * TESTING * INSPECTION SERVICES * ANALYTICAL LABORATORIES

DATE: AUGUST 27, 2015 SCALE: 1" = 150'
DRAWN BY: JEF APPROVED BY: JBC
JOB #: 15100065MOR
DWG NAME: AIRPARK PROPERTY

**AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO
ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE
SERVICES**

The City of Morgantown hereby ordains that a new Article 745 is established within City Code as follows:

SECTION 745.1. PURPOSE

The City Council of the City of Morgantown finds and concludes as follows with respect to the service fee established by this Article:

(a) The improvement and maintenance of the public rights-of-way is an essential municipal service provided by the City which is necessary to ensure public health, safety, and welfare;

(b) The provision of police protection services is likewise an essential municipal service provided by the City which is necessary to ensure public health, safety, and welfare;

(c) These services are enjoyed by both residents and nonresidents of the City who travel within the City due to their use of the public rights-of-way for transportation and their reliance on municipal police services to respond to and prevent criminal activity;

(d) These services are essential to the conduct of business, educational, and nonprofit institutions with the City, and to the safe travel of the employees, customers, and attendees of such institutions;

(e) The cost of funding these essential services should be supported, so far as reasonably possible, by the users of the services;

(f) West Virginia Code section 8-13-13 grants municipalities that furnish essential services, including the maintenance and improvement of the public rights-of-way and the provision of police protection services, the plenary power and authority to provide for the installation, continuance, maintenance or improvement of the services, to make reasonable regulations of the services, and to impose by ordinance upon the users of the services reasonable rates, fees and charges to be collected in the manner specified in the ordinance;

(g) This ordinance creating Article 745 of the City Code and establishing a service fee for the services identified in this Section is designed to place upon users of the services a fee reasonably related to the use of the services;

(h) A substantial portion of the users of these services are nonresidents of the City who are employed within the City, and employers within the City are in possession of important employment information essential to the efficient and effective collection of the service fee;

(i) The reasonable regulations to be established under this ordinance for employer withholding and remittance of the service fee are central to the effective collection of the service fee from all service users, which promotes equity in the funding of these essential services;

(j) It is in the best interest of the City, its residents, and the users of these essential services to impose the service fee to appropriately fund the services;

(k) The fee established by this ordinance is designed to bear a direct and reasonable relationship to the actual services provided in exchange for the fee;

(l) The fee is warranted based on the anticipated use of these essential services by the defined class of users due to their regular travel within the City, and the fee will not impose an unfair or burdensome collection upon the users based on their use of the services.

SECTION 745.2. DEFINITIONS

The following definitions apply to this Article 745:

(a) “City” shall mean the City of Morgantown

(b) “Employee” shall mean any individual who is employed at or physically reports to any location within the City and is paid by an employer, on a full-time or part-time basis, in exchange for salary, wages or other compensation.

(c) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the city. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the city.

(d) “Employer” shall mean any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the city and who employs an employee, as defined herein.

(e) “Fee” shall mean the city service fee imposed by this article.

(f) “Municipal Service” or “Municipal Services” shall mean the maintenance and improvement of Public Rights-of-Way and Police protection services.

(g) "Self-employed individual" shall mean an individual who maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the City boundaries.

SECTION 745.3. SERVICE FEE

Each Employee and Self-Employed Individual shall pay a fee for Municipal Services in the total amount of \$3.00 for each calendar week the individual is Employed in the City. This fee is in addition to any licenses, taxes, or fees required by other provisions of this Code.

SECTION 745.4. COLLECTION OF SERVICE FEE

(a) Every Employer shall deduct and withhold from any compensation paid to an Employee an amount equal to the fee imposed herein upon the Employee; provided, that the Employer shall not deduct or withhold the fee from the compensation of any Employee who executes and delivers a proper form prescribed by the City evidencing prior payment of the fee either directly or by collection through another Employer in the City.

(b) Each Employer shall maintain adequate records concerning the fees deducted and withheld and the Employees exempt from withholding.

(c) Any Employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the City in accord with this Article and any related regulations shall be liable for such fee, along with any penalties or interest accrued thereon, as though the fee had originally been assessed against the Employer, subject to the following provisions:

(1) this Section shall not be applied to make the State of West Virginia liable for the debts of its employees, nor shall it preclude the State of West Virginia from voluntarily withholding or paying the service fee;

(2) this Section shall not permit the City to collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(d) Every Self-employed individual who is not Employed by an Employer and who has not had the fee deducted or withheld by an Employer shall file a form prescribed by the City and pay to the City all amounts due pursuant to this Article.

(e) The failure of any Employer to deduct the fee shall not relieve an Employee from the duty to pay the fee. The obligation to pay the service fee shall be a personal obligation of each individual subject to the service fee, and the City may take any action necessary, including the institution of legal proceedings, to collect the fee; provided that the City shall not collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(f) Fees not received by the City as of the applicable due date shall be considered delinquent. The city collector shall assess each delinquent account a penalty of five percent of the balance thereof. If the delinquency exceeds a month, an additional penalty of two percent shall be added to the total outstanding delinquent fee at the end of each additional month or part thereof. Without

limiting the generality of the foregoing, the delinquency penalty may be assessed against any Employer responsible for withholding and remitting the fee of any Employee subject to the fee imposed in this article. The Finance Director may waive or abate the penalty established by this subsection for reasonable cause.

SECTION 745.5. REGULATIONS AND ADMINISTRATION

(a) The Finance Director shall prescribe regulations providing for the collection of amounts due pursuant to this Article, including the due date(s) for remittance of fees; guidelines for collection and payment of fees by Employers, Employees, and Self-employed individuals; requirements for withholding, collection, and remittance of fees by Employers; requirements for submission of additional information necessary or helpful in identifying all service fees owed, including employees' dates of employment and personal identification information. The rules, regulations, and procedures established shall be reduced to writing and shall take effect upon being filed in the office of the City Clerk.

(b) The administration of this article is vested in and shall be exercised by the Finance Director, who shall prescribe forms and reasonable rules of procedure in conformity with this Article for the making of returns, and for ascertaining, assessment and collection of fees imposed hereunder.

(c) In order to determine the correctness or adequacy of any remittance or information submitted to the City pursuant to this article:

(1) The Finance Director shall have the power to examine or cause to be examined any books, papers, records, memoranda, documents and any other payroll data and information, and may take testimony and require material proof with power to administer oaths to any person or persons from whom testimony may be taken.

(2) The Finance Director shall have the power to issue subpoenas and subpoenas duces tecum in the name of the City to compel the attendance of witnesses and the production of books, papers, records, memoranda, documents and testimony at the time and place specified.

(3) The Finance Director may enforce the provisions of this article by instituting a civil action in any court of competent jurisdiction pursuant to *W. Va. Code* § 8-13-15.

SECTION 745.6. ADMINISTRATIVE REVIEW AND RIGHT OF APPEAL

(a) Any person who has paid the fee imposed by this Article shall, in order to challenge the validity of the fee, file a claim for refund no later than 30 days after the fee is paid to the City by written notice of such claim on a form prescribed by the Finance Director setting forth with particularity all objections thereto. The burden of proof shall be upon the aggrieved party to show that the fee was paid and is incorrect and contrary to law, in whole or in part. The Finance Director shall review the refund claim and provide for any necessary hearing, render a decision on the claim and promptly either notify the protesting party of such decision in writing or direct that a refund be issued, all within a reasonable time. Any written decision shall be issued by certified mail, return receipt requested.

(b) If aggrieved by the decision of the Finance Director, the protesting party may appeal the decision of the Finance Director to the Circuit Court of Monongalia County within 30 days after service of the decision.

(c) The administrative remedies set forth in this section are exclusive. Failure to timely file a refund claim in accordance with this section shall preclude any right to refund with respect to any fee paid to the city prior to the claim. If no appeal is taken pursuant to this section within 30 days after service of the decision, the decision shall become final and conclusive and not subject to administrative or judicial review. The amount of the fee and accumulated penalties, if any, due the City under such decision shall be due and payable on the day following the date upon which such decision becomes final.

SECTION 745.7. DEDICATION OF REVENUE

All revenues generated by the city service fee imposed by this Article are hereby dedicated to and shall be exclusively utilized for the maintenance and improvement of Public Rights-of-Way and Police protection services.

SECTION 745.8. SEVERABILITY

If any portion of this Article is determined by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall not affect the validity, constitutionality, legality, or application of any other portion of this Article.

SECTION 745.99. PENALTY

(a) It shall be unlawful for any person to refuse to pay, collect or remit the service fee herein provided to be paid, collected and remitted or to refuse to make any filings required by this article, or to make any false or fraudulent filing or false statement in any filing with the intent to defraud the City, or to evade the payment of the street maintenance and improvement fee or any part thereof; or for any person to aid or abet another in any attempt to evade the payment of the fee, or for any officer or partner or principal of any entity to make any false filing or any false statement in any filing with the intent to evade the payment of the fee.

(b) Whoever willfully violates any provisions of this article shall upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00).

This Ordinance shall be effective as of the 1st day of January, 2016.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:



The City of Morgantown

Jeff Mikorski, ICMA-CM

City Manager

389 SPRUCE STREET

MORGANTOWN, WEST VIRGINIA 26505

(304) 284-7405 FAX: (304) 284-7430

www.morgantownwv.gov

Office of the City Manager

Friday, September 25, 2015

Safe Street and Safe Community Service Fee Plan

This plan is in accordance with the Morgantown City Council's direction to discuss and review a plan of action for the implementation of a user fee. The goal of the Service Fee is to improve the safety of the City by the maintenance level of City streets and improve the level of police protection in residential areas, business districts, and throughout the City.

Background

W.V. Code 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of services, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such services reasonable rates, fees, and charges to be collected in the manner prescribed in the ordinance.

Based on recent census information (2010) regarding the commuting population, Morgantown's estimated population is 29,076. Of that population, Census figures suggest that 12,160 also work in the City. In addition, it was estimated that another 20,487 people work in the City that do not live in the City. Based on those numbers, the Census Bureau estimates the daytime population to be 49,563 in the City of Morgantown. Their numbers do not include students, visitors, or tourists. It is estimated that the daytime population increases by approximately 70% just due to commuters from outside the city. All residents, workers employed, and visitors within the City of Morgantown expect to be provided city services for well-maintained streets and adequate necessary police protection.

Street Maintenance

The City has nearly 100 miles of streets that it maintains which has an estimated resurfacing value of 33 million dollar (asphalt and concrete). In order to get the resurfacing cycle back to 10-15 years for each street to be resurfaced, we would need to set aside nearly 2 million dollars each year. A portion of this amount could also be used for improving streets and right-of-ways (for instance, widening streets, improving street function, right-of-ways, and improving public alleys).

Maintenance of streets also includes cleaning and winter treatment. Employees and residents rely on getting to places of employment during any weather situation. Improvement of winter treatment of City streets will include purchasing new equipment to the fleet and replacing aged fleet. In addition, an increase in personnel will improve the number of treatment vehicles on the street after a winter event. Additional personnel will also help improve other public works activities outside of winter months, such as maintenance and cleaning of streets and right-of-ways. Equipment needed to improve maintenance of City streets includes trucks, plows, sweepers, vacuum trucks, and other vehicles to support street maintenance.

Police Protection

The Police Department is currently responding to 49,470 calls for service (2014) with 65 officers, more calls than all other police agencies in the County added together. As calls for service increase without the number of officers increasing, the less preventative services, traffic enforcement, or community policing can occur (whether it is in the Downtown or neighborhoods). Based on the current staffing levels and calls for service, the Police Department's primary focus is the response to calls for service with very little opportunity for proactive, preventative and community policing activities.

We enjoy the City of Morgantown to be the place for different events and activities as a quality of life indicator. The City is expected to cover and provide traffic control for special events such as parades, runs, walks, festivals, university activities, holiday events like 4th of July, and some major events like the Morgantown Marathon. Current staffing levels necessitate the use of overtime in order to meet the regular demands of the department such as WVU Sporting events, Downtown Nightlife as well as the majority of special events hosted within the City.

We have seen from the Downtown Retail study that even the perception of crime or lack of police protection in a business district can cause people to stay away from the downtown or other business districts.

Additional officers would allow an increase from 3 patrol areas per shift to 5 patrol areas. This will allow individual officers to respond to smaller patrol areas, improving service and effectiveness, with the Downtown getting better coverage 24/7. This improvement would provide an opportunity for better community policing and enforcement strategy.

Estimated Revenue from Service Fee

- Service fee based on employment in the City of Morgantown. A conservative number of workers, based on the census information, is 30,000.
- A fee of \$3/week or \$156 annually, would equal an estimated \$4,680,000.00

Estimated Expenditure of Service Fees

Funded Activity	Percentage	(Estimated amount on \$4,680,000)
• Street Resurfacing and Improvement	35-45%	\$1,638,000 - \$2,106,000
• Public Works Personnel	07-10%	\$ 327,600 - \$ 468,000
• Street Maintenance Equipment	07-10%	\$ 327,600 - \$ 468,000
• Police Protection Personnel / Retention	25-30%	\$1,170,000 - \$1,404,000
• Police Equipment	06-10%	\$ 280,800 - \$ 468,000

**AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC.
TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, to provide listing of rental space at the Morgantown Municipal Airport by KLM Properties, Inc.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**LISTING FOR RENT CONTRACT
EXCLUSIVE RIGHT TO RENT REAL PROPERTY**

BROKER (Company): KLM Properties, Inc.

LICENSEE (S): Kathy L. Martin & Randy W. Neal

OWNER: City of Morgantown, c/o Jeff Mikorski

Does Owner have a Listing Contract with another Broker? Yes No

If yes, explain: N/A

1. PROPERTY

Address: 100 Hart Field Road, Suite #208 (+/- 300 sf of 2nd level space)

Municipality (city, borough and township): Morgantown, WV 26505

County: Monongalia School District: Morgantown Corporation

Zoning and Present Use: Industrial/Airport Vacant Space

Identification Number (For example, tax identification number, parcel number, deed book, page, recording date):
Morgantown Corporation, Tax Map 32A, p/o Parcels 1-9, 10-12, 13 & 14-24

2. MONTHLY RENTAL \$900 **SECURITY DEPOSIT \$** First Month Rent

3. STARTING & ENDING DATES OF THIS CONTRACT (also called "Term")

A. No Association of REALTORS has set or recommended the term of this contract. Owner and Broker have discussed and agreed upon the length of term of this contract.

B. **Starting Date:** This contract starts when signed by Owner and Broker, unless otherwise stated here: N/A

C. **Ending Date:** This contract ends on June 2, 2016

4. BROKER'S FEE

A. No Association of Realtors has set or recommended the Broker's Fee. Owner and Broker have negotiated the fee that Owner will pay Broker.

B. The Broker's Fee for finding tenant and contract negotiation is 6% of aggregate lease amount

Owner agrees to pay the same fee to Broker for renewals, extensions or additional leases where the original resulted from Broker's services or any other Broker's services during the term of this contract.

C. The Broker's Sales Fee if Tenant buys Property is 8% of/from the sale price and paid by Owner.

5. BROKER'S DUTY

Owner is hiring a Broker to find a Tenant for the Property. Owner allows Broker to use print and/or electronic advertising.

Broker is acting as Owner's Agent. Broker's rental agents, salespeople, employees, officers or partners are acting as agents only and will not be legally responsible for damages or repairs to the Property or for a tenant's failure to meet the terms of a lease.

Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: _____

6. COOPERATION WITH OTHER BROKERS

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Owner agree that Broker will pay from Broker's Fee a fee to another Broker who procures the buyer/tenant, and is a member of a Multiple Listing Service, and who:

A. **Represents a buyer/tenant (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Owner, will represent the interests of the buyer/tenant.**

No Yes

B. **Does not represent either the Owner or a buyer/tenant (TRANSACTION LICENSEE).**

No Yes If yes, amount: TBD

7. PAYMENT OF BROKER'S FEE

A. **Owner will pay Broker's Fee if Property, or any ownership interest in it, is rented, sold or exchanged during the term of this Contract by Broker, Broker's agents, Owner, or by any other person or broker at a price acceptable to Owner.**

B. Owner will pay Broker's Fee if negotiations that are pending at the Ending Date of this contract result in a sale, lease or other tenancy.

C. Owner will pay Broker's Fee after Ending Date of this contract IF:

(1) Property is rented or sold within 90 days of the Ending of this Contract, or the Ending Date of the lease (or any renewals or extensions). AND

(2) The buyer/tenant was shown, made an offer on or negotiated to rent or buy the Property during the term of this contract.

8. DUAL AGENCY

Owner agrees that Broker may also represent the buyer/tenant(s) of the Property. Broker is DUAL AGENT when representing both Owner and buyer/tenant in the lease or purchase of a property.

9. OTHER PROPERTIES

Owner agrees that Broker may list other properties for rent and that Broker may show other properties to prospective tenants.

10. CONFLICT OF INTEREST

A *conflict of interest* is when Broker has a financial or personal interest where Broker cannot put Owner's interest before any other. If Broker, or any of Broker's salespeople, has a *conflict of interest*, Broker will notify Owner in a timely manner.

11. COPYRIGHT

In consideration of Broker's efforts to market Owner's Property as stated in this Contract, Owner grants Broker a non-exclusive, worldwide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Owner to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Owner's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for the purpose of marketing the Property during the Contract term. The License may not be revoked by Owner except for violation of the terms of this License and shall survive the ending of the Contract for a period of six (6) months. Owner also grants Broker the right to sublicense to others any of these rights granted to Broker by Owner. Owner represents and warrants to Broker that the License granted to Broker for the Material does not violate or infringe upon the rights, including any copyrights, of any person or entity. Owner understands that the terms of the License do not grant Owner any legal right to any works that Broker may produce using the Materials.

12. BROKER AUTHORIZATIONS

A. Owner (check one) does does not authorize Broker to contract for any repairs, at Owner's expense, that believes are necessary to Property. Broker is not required to do this, and this does not create a property management agreement between Owner and Broker.

B. Sign and Keys: Owner allows, where permitted

- | | | |
|---|--|---------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | For Rent Sign |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Key in Office |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Lock Box |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |

13. TRANSFER OF THIS CONTRACT

- A. Broker will notify Owner immediately in writing if Broker transfer this Contract to another broker when:
1. Broker stops doing business, OR
 2. Broker forms a new real estate business, OR
 3. Broker joins business with another.
- Owner agrees that Broker may transfer this Contract to another broker upon the written consent of Owner, which shall not be unreasonably withheld. Broker will notify Owner immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Owner will follow all requirements of this Contract with the new broker.
- B. Should Owner transfer the Property, or an ownership interest in it, to anyone, or should ownership change during the term of this contract, all succeeding owners must follow the requirements of this Contract.

14. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN WEST VIRGINIA

Federal and state laws make it illegal for Owner, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years old age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OR RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposits, or as reasons for any decision relating to the sale of property.

15. IF PROPERTY WAS BUILT BEFORE 1978

The Lead-Based Paint Hazard Reduction Act says that any Landlord of property built before 1978 must give the Tenant an EPA pamphlet titled *Protect Your Family from Lead in Your Home*. The Landlord also must tell the Tenant and the Broker what the Landlord knows about lead-based paint and lead-based paint hazards that are in or on the property being rented. Landlord must tell the Tenant how the Landlord knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the conditions of the painted surfaces, and any other information Landlord knows about lead-based paint and lead-based paint hazards on the property. Any Landlord of a pre-1978 structure must also give the Tenant any records and reports that the Landlord has or can get about lead-based paint or lead-based paint hazards in or around the property being rented, the common areas, or other dwellings in multi-family housing. The Act does not require the Landlord to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. NO OTHER CONTRACTS

During the length or term of the Contract, Owner will not hire any other Broker to rent or sell the property. Owner will not enter into another listing agreement with another broker that begins before the Ending Date of the Contract. Owner will refer all offers and inquiries to Broker.

Owner Initials: _____

Broker/Licensee Initials: _____

17. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Owner. Any verbal or written agreements that were made before are not a part of this Contract.

18. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Owner.

Return to by facsimile (Fax) constitutes acceptance of this Contract. Owner gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(s) listed below. Owner has read the entire Contract before signing. All Owners must sign this Contract.

NOTICE BEFORE SIGNING: IF OWNERS HAS LEGAL QUESTIONS, OWNER IS ADVISED TO CONSULT AN ATTORNEY.

OWNER'S MAILING ADDRESS: _____

PHONE: _____ **FAX:** _____ **E-MAIL:** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

BROKER (Company Name) _____

ACCEPTED BY _____ **DATE** _____

NOTICE OF AGENCY RELATIONSHIP

When working with a real estate agent in buying or selling real estate West Virginia Law requires that you be informed of whom the agent is representing in the transaction.

The agent may represent the Lessor, the Lessee, or both. The party represented by the agent is known as the agent's principal and as such, the agent owes the principal the duty of utmost care, integrity, honesty and loyalty.

Regardless of whom they represent, the agent has the following duties to both the Lessee and the Lessor in any transaction:

- Diligent exercise of reasonable skill and care in the performance of the agent's duties.
- A duty of honest and fair dealing and good faith.
- Must offer all property without regard to race, color, religion, sex, ancestry, physical or mental handicap, national origin or familial status.
- Must promptly present all written offers to the owner.
- Provide a true legible copy of every contract to each person signing the contract.

The agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

Should you desire to have a real estate agent represent you as your agent, you should enter into a written contract that clearly establishes the obligations of both parties. If you have any questions about the roles and responsibilities of a real estate agent, they can provide information upon your request.

In compliance with the West Virginia Real Estate License Act, all parties are hereby notified that:

(printed name of agent) Kathy Martin & Randy Neal, affiliated with

(firm name) KLM Properties, Inc., is acting as agent of:

- The Lessor, as listing agent or subagent.
 The Lessee, as the lessee's agent.
 Both the Lessor and Lessee, with the full knowledge and consent of both parties.

CERTIFICATION			
By signing below, the parties certify that they have read and understand the information contained in this disclosure and have been provided with signed copies prior to signing any contract.			
<u>[Signature]</u>	Date	Lessor	Date
	Date	Lessee	Date
	Date	Lessee	Date

I hereby certify that I have provided the above named individuals with a copy of this form prior to signing any contract.

Agent's Signature [Signature]

WV Real Estate Commission
 300 Capitol Street, Suite 400
 Charleston, WV 25301
 304.558.3555
 <www.wvrec.org>

This form has been promulgated by the WVREC for required use by all West Virginia real estate licensees.



Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: 100 Hart Field Road, Morgantown, WV 26505 (+/- 7,000 sf of lower level space)

Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting premises, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Disclosure

Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing, and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Acknowledgment (Initial)

Lessee has received copies of all information listed above.

Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Acknowledgment (initial)

Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her ability to ensure compliance.

Declaration of Accuracy

Signing parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

 8/26/15
Date

Lessee Date

Date

Lessee Date

Date

Agent Date



LIMITED DUAL AGENCY DISCLOSURE

In reference to the [] PURCHASE AGREEMENT, [X] LEASE, covering the real property commonly known as 100 Hart Field Road (+/- 774 sf of 2nd level space) and owned by City of Morgantown, hereinafter referred to as Seller, and, hereinafter referred to as Buyer, the undersigned parties hereby agree as follows:

The Broker in this transaction, KLM Properties, Inc., together with associated salesperson, hereinafter collectively referred to as Broker, is hereby authorized by Seller and Buyer to assist both of them in this transaction in limited dual agency capacity, as set forth below.

Seller and Buyer understand that this limited dual agency relationship may create certain conflicts of interest, and that Broker will act as facilitator or intermediary and will endeavor to be impartial between Seller and Buyer. Except as expressly provided below, Broker in their capacity as a limited dual agent, shall disclose to both Seller and Buyer all known latent defects in the property, any matter that must be disclosed by law, and information which Broker believes may be material or might affect Seller's or Buyer's decisions with respect to this transaction.

The parties acknowledge that Broker has not disclosed and Broker agrees not to disclose:

- A. To Buyer, information about what price or terms Seller will accept other than the listed price or terms, without the express written permission of the Seller.
B. To Seller, information about what price or terms Buyer will offer other than those offered in writing by Buyer, without the express written permission of the Buyer.
C. Any information of a confidential nature which could harm one party's bargaining position or benefit the other's.

Both parties understand and agree that Broker has the right to receive commission as compensation, agreed upon in the Exclusive Right to Sell Agreement between Seller and Broker, and that Broker shall not receive any compensation from Buyer unless this is disclosed and consented to by Seller. In view of Broker's limited dual agency relationship, the parties understand they have the responsibility of making their own decisions with respect to the terms to be included in their agreement. The parties understand the implication of Broker's limited dual agency role as facilitator or intermediary, rather than that of advocate and exclusive representative, and have determined the benefits of entering into this transaction with Broker acting as a limited dual agent outweigh said implications.

Therefore, Seller and Buyer both, each of them individually, consent to Broker's limited dual agency capacity and hereby waive any claims now and hereafter arising out of any conflicts of interest, or for breach of fiduciary duty arising from said agency role.

Seller and Buyer understand this document does not replace prior agreements entered into with Broker, such as a Buyer/Broker Representation Agreement or Exclusive Right to Sell Listing Agreement. However, in any areas where this document contradicts or conflicts with those documents, this LIMITED DUAL AGENCY DISCLOSURE shall supersede.

The undersigned parties acknowledge that they have thoroughly read and approved this document and acknowledge receipt of a copy hereof.

Seller Date

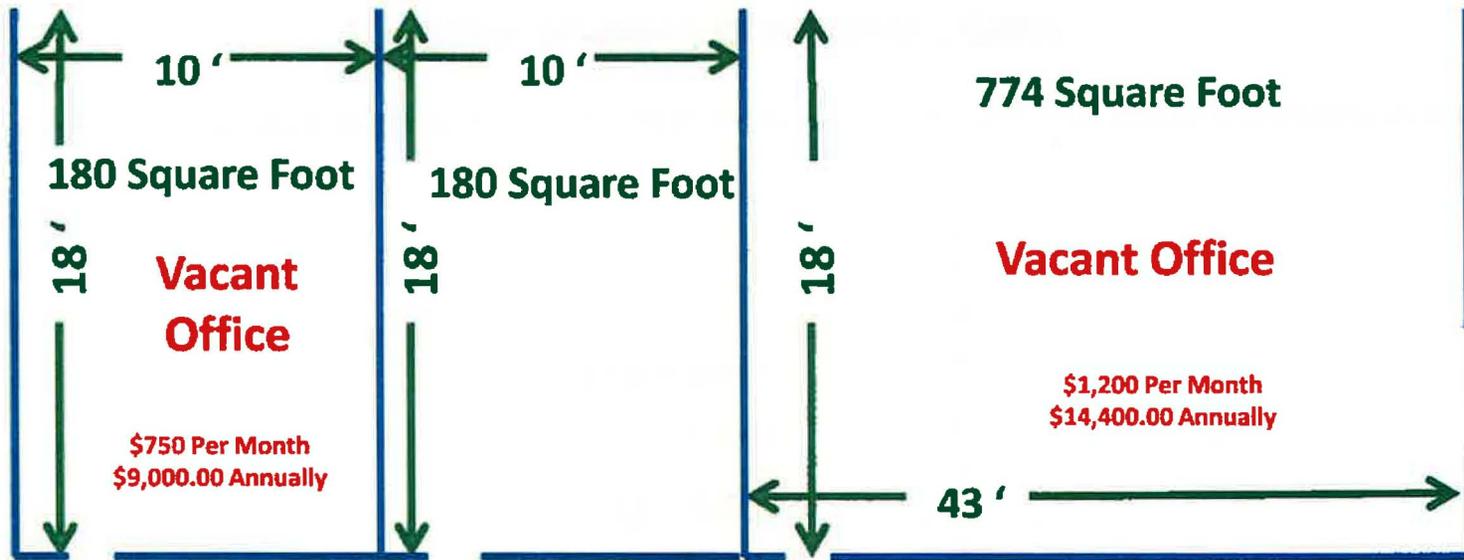
Buyer Date

Seller Date

Buyer Date

Agent Date

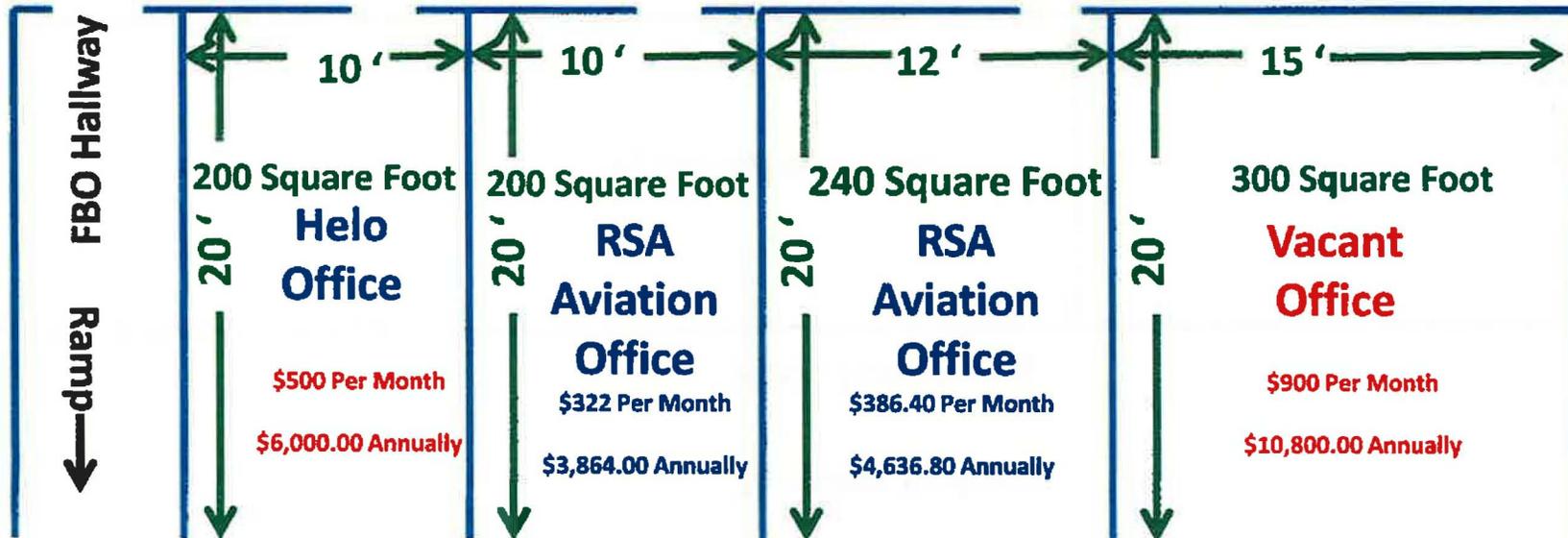
Agent Date



Terminal Hallway

(Restaurant →)

South Terminal Upstairs Offices



FBO Hallway
Ramp ←

Terminal Parking

(Hart Field Road)

7,000 Square Foot

??'

**Vacant
Office**

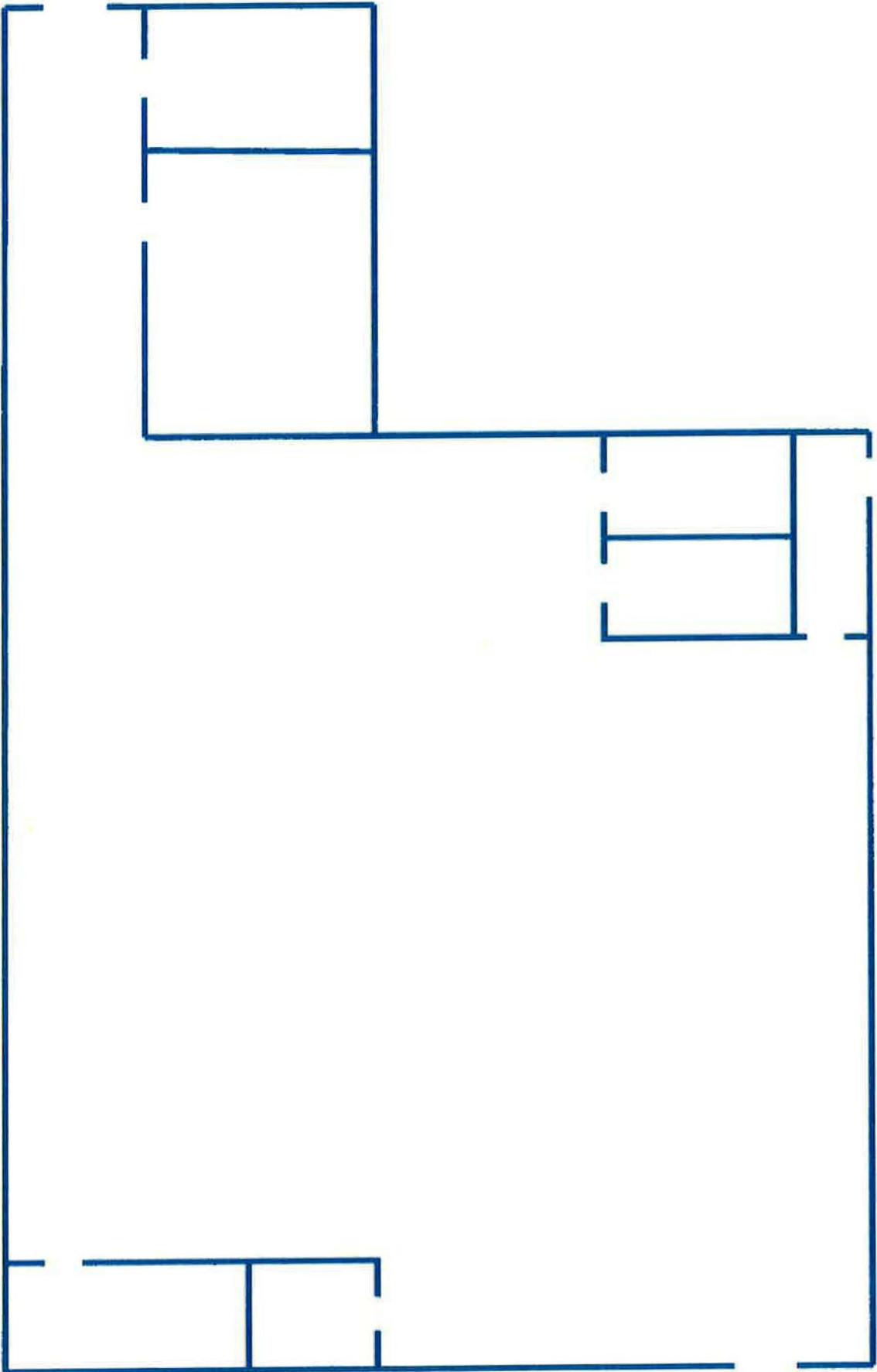
\$4,666.66 Per Month

\$56,000.00 Annually

??'

North Terminal Downstairs Offices

North Terminal Downstairs Offices



AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH FRIENDS OF DECKERS CREEK, INC. FOR SPACE AT THE WOODBURN SCHOOL SITE

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, leasing space at the former Woodburn School site to Friends of Deckers Creek, Inc.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

LEASE AGREEMENT

This agreement is made this _____ day of _____, 2015 by and between **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia (“Lessor”), and **FRIENDS OF DECKERS CREEK, INC.**, a West Virginia non-profit corporation (“Lessee”), upon the following terms:

RECITALS

- A. Lessor is the sole owner of the premises described below.
- B. Lessee is a non-profit organization that was established to improve the natural qualities of, increase the public concern for, and promote the enjoyment of the Decker’s Creek Watershed; and desires to lease office space from lessor.
- C. The parties desire to enter a lease agreement defining their respective rights, duties, and liabilities relating to the premises.

In consideration of the matters described above and of the mutual benefits and obligations set forth in this lease agreement, the parties agree as follows:

SECTION ONE. DESCRIPTION OF PREMISES

- A. Lessor leases to lessee that certain space consisting of the Modular Building located on the former Woodburn Elementary School, consisting of 2,028 square feet, more or less, located at 205 Parsons Street situated in Morgantown, Monongalia County, West Virginia, and shown on the attached “Exhibit 1,” which is incorporated herein by reference (the “Premises”).
- B. The premises shall be used for the purpose of office space and for no other purpose.
- C. In addition to the demised premises, the Lessee shall have the right to use all driveways, parking areas, and sidewalks (collectively, “Common Areas”), if any, in or about the Woodburn School building, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will be responsible for routine maintenance of the Common Areas.

SECTION TWO. TERM OF LEASE

- A. This lease agreement shall cover a term commencing **December 1, 2015**, and extending until midnight on the day preceding the **third** anniversary of such date, provided that either of parties to this lease gives to the other, three months before the latter date, notice in writing of the party’s intention to terminate this lease on that date. Otherwise this lease will continue in force for another term of one year, and in the same manner from year to year (“Term”), including all terms and conditions in this lease, until one of parties terminates this lease by notice in writing in some ensuing year in the manner described above, which notice terminates this lease at the end of year for which premises are then held.
- B. Lessee shall surrender the premises to lessor immediately on termination of the lease.

SECTION THREE. DELIVERY OF POSSESSION

If, for any reason, lessor cannot deliver possession of the demised premises at the commencement of the term, this lease agreement shall not be void or voidable, nor shall lessor be liable to lessee for any loss or damage resulting from the inability to deliver possession. However, there shall be a proportionate reduction in total rent, covering the period between the commencement of the term and actual delivery of the demised premises to lessee, in the event of a late delivery by lessor.

SECTION FOUR. RENTAL

A. Lessee shall pay a total of \$5,070 for the first 12 months, \$7,098 for the second twelve months, and \$9,126 for the third twelve months of the initial term of this lease agreement, resulting in a monthly rate of \$422.50, 591.50, and \$760.50 respectively, due on the 1st day of each month for the succeeding month's rental. This sum reflects a monthly rate of \$2.50, \$3.50, and \$4.50 per square foot of office space. Payments shall be made to lessor at the address specified herein, and a payment shall be delinquent if not paid by the fifth day after which it is due.

B. The annual rental payment for each year beyond the initial term shall increase by an amount equal to the proportional increase in the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) for all items over the twelve-month period prior to the start of the new yearly term; provided, that in no event shall the annual rental payment increase by an amount less than One Percent (1%) of the prior year annual rental payment.

C. On lessee's failure to pay the rental on a timely basis, lessor shall have the right to terminate this lease agreement, and the lease agreement will then be forfeited.

SECTION FIVE. RESTRICTIONS ON USE

Lessee shall not use or permit the demised premises, or any part of the demised premises, to be used for any purposes other than those set forth in this lease agreement. Lessee shall neither permit on the demised premises any act, sale, or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made or permitted to be made that shall result in: (1) waste on the demised premises; (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building; (3) improper, unlawful, or objectionable use, including sale, storage, or preparation, of food, alcoholic beverages, or materials generating an odor on the premises; or (4) noises or vibrations that may disturb other tenants. Lessee shall comply with all governmental regulations and statutes affecting the demised premises either now or in the future.

SECTION SIX. ABANDONING PREMISES OR PERSONAL PROPERTY

Lessee shall not vacate or abandon the demised premises at any time during the term of this lease agreement. If lessee does vacate or abandon the demised premises or is dispossessed by process of law, any personal property belonging to lessee and left on the demised premises shall be deemed abandoned at the option of lessor and shall become the property of lessor.

SECTION SEVEN. UTILITIES AND SERVICES

A. Lessor shall furnish and timely pay when due and payable, at no additional cost to the Lessee, the following utilities and/or services:

- (i) Custodial services in the common areas used by other tenants.
- (ii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.
- (iii) Snow removal in front of 205 Parsons Street, including only the front of the modular building constituting the

Leased Premises and the walkway adjacent thereto, to be paid by the Lessor if third-party services are required, who shall be entitled to reimbursement as Additional Rent from the Lessee upon Lessor's delivery of a separate invoice, providing evidence of payment made.

B. The Lessee, at its expense, shall furnish and provide payment to the applicable company or vendor for the following utilities and/or services:

- (i) Utilities including natural gas, electric, water.
- (ii) Custodial Services in the demised premises.
- (iii) Trash services, for which the Lessee may choose to partner with the neighboring tenants.
- (iv) Telephone and internet connectivity services.
- (v) The Lessee shall have the right to rekey locks, install a key card access system, or provide any other security system for the demised premises, using such security services provider as the Lessee may choose in its sole discretion, provided that Lessee shall ensure Lessor is able to access the premises through such locks or system. The Lessee may remove said system at any time during the term of this lease, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal and ensure that an adequate method for securing the demised premises is in place.

C. In the event that any utilities or services being provided by the Lessor are interrupted for reasons within the Lessor's control and as a result, suitability of the Premises is interrupted, the Lessee shall have the option to (i) cause the utilities or services to be reinstated and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed for such expenditures; or (ii) terminate this Lease upon notice to Lessor and Lessor's failure to cure such default within three (3) business days.

SECTION EIGHT. ALTERATIONS AND MODIFICATION; REPAIRS

A. Lessee has inspected the demised premises, and they are now in a tenantable and good condition, except as specifically identified by Lessee on the attached "Schedule 1 – Lessee Identification of Defects."

B. Lessee shall take good care of the demised premises and shall not alter, repair, or change the demised premises without the prior, express, and written consent of lessor, which consent shall not be unreasonably withheld.

C. All alterations, improvements, and changes that lessor allows shall be done either by or under the direction of lessee and at the expense of lessee. Lessor shall not have the right to control the manner of performance or the selection of contractors, and it is the intent of the parties that no public funds be contributed either directly or indirectly to the payment for any alterations or improvements. Lessee shall be responsible for ensuring that any approved alterations or improvements are performed in compliance with applicable laws. All alterations and improvements shall become the property of lessor and remain on the demised premises, except that at the option of lessor, lessee shall, at its expense, remove from the demised premises all partitions, counters, railings, and similarly installed improvements when surrendering the demised premises.

D. All damage or injury done to the demised premises by lessee or any person who may be in or on the demised premises with the consent of lessee shall be paid for by lessee.

E. Lessee shall, at the termination of this lease agreement, surrender the demised premises to lessor in as good condition and repair as reasonable and proper use of the premises will permit.

F. Lessor shall be responsible for making all routine repairs and for performing routine maintenance in the demised premises except the services and maintenance for which Lessee is responsible pursuant to **Section 7.B.** of this Agreement. Lessee shall

permit lessor and lessor's agents to enter the demised premises at all reasonable times to inspect them, clean windows, perform other janitorial services, maintain the building and demised premises, make repairs, alterations, or additions to the demised premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of nonliability for alterations, additions, or repairs, or to place on the premises any usual or ordinary "For Sale" signs, without any rebate of rent to lessee or damages for any loss of occupation or quiet enjoyment of the demised premises. Lessor may, at any time within ninety days prior to the expiration of this lease agreement, place on the windows and doors of the premises any usual or ordinary "To Let" or "To Lease" signs. Lessor and lessor's agents may, during the last-mentioned period, enter on the demised premises at reasonable hours and exhibit them to prospective tenants.

SECTION NINE. LIMITATION OF LIABILITY; INDEMNIFICATION

A. Lessee waives all claims against lessor for damages to goods or for injuries to persons on or about the demised premises from any cause arising at any time.

B. Lessee will indemnify lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the demised premises by lessee, or arising from the failure of lessee to keep the demised premises in good condition as provided in this lease agreement.

C. Lessor shall not be liable to lessee for any damage by or from any act or negligence of any other occupant of the same building, or by any owner or occupant of adjoining or contiguous property.

D. Lessee agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants of the building caused by the misuse or neglect of the demised premises by lessee.

E. Lessee shall defend, indemnify, and hold harmless the lessor and its representatives and employees from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not limited to, attorney fees, court costs, and expert fees), of any nature whatsoever arising out of, or incidental to, this Lease Agreement or Lessee's use or occupancy of the leased premises, or the acts or omissions of the Lessee, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, regardless of where the injury, death, loss, or damage may occur unless such injury, death, loss, or damage is caused by the sole negligence of the Lessor, its employees, agents, officers, or representatives. The Lessor shall give Lessee reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

F. In order to assure its ability to defend and hold harmless the lessor, lessee shall carry insurance in the following minimum amounts during the term of this lease, naming the lessor as an additional insured on the policy(ies):

Bodily Injury\$500,000 per occurrence
Property Damage.....\$ 50,000 per occurrence

G. Lessee shall provide the lessor with certification of insurance through the term of this Agreement, evidencing such coverage to be in force.

H. The Lessor agrees to notify the lessee in writing, as soon as practicable, of any claims, demands, or action arising out of an occurrence covered hereunder of which the lessor has knowledge, and to cooperate with the lessee in the investigation and defense thereof.

SECTION TEN. DESTRUCTION OF PREMISES

A. In the event of a partial destruction of the demised premises during the term of this lease agreement from any cause, lessor may, at its option, repair the demised premises.

B. Any partial destruction of the demised premises shall neither annul nor void this lease agreement, except that lessee shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by lessee on the demised premises. Lessor may, at lessor's option, make repairs within a reasonable time, this lease agreement continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this section. If lessor elects not to make repairs, or if repairs cannot be made under the laws and regulations of the applicable governmental authorities, this lease agreement may be terminated at the option of either party.

C. In the event of any partial destruction of the demised premises which lessor may elect to repair under the terms of this section, the provisions of any statute or common law rule authorizing lessee to make the repairs and deduct the expenses from the rent are waived by lessee.

D. A total destruction of the building in which the demised premises are situated shall terminate this lease agreement.

SECTION ELEVEN. CONDEMNATION

A condemnation of the entire building or a condemnation of the portion of the demised premises occupied by lessee shall result in a termination of this lease agreement. Lessor shall receive the total of any consequential damages awarded as a result of condemnation proceedings. All future rent installments to be paid by lessee under this lease shall be terminated.

SECTION TWELVE. ASSIGNMENT AND SUBLEASE

A. Lessee shall not assign any rights or duties under this lease agreement nor sublet the demised premises or any part of the demised premises, nor allow any other person to occupy or use the demised premises without the prior, express, and written consent of lessor. A consent to one assignment, sublease, or occupation or use by any other person shall not be a consent to any subsequent assignment, sublease, or occupation or use by another person. Any assignment or subletting without consent shall be void.

B. This lease agreement shall not be assignable, as to the interest of lessee, by operation of law, without the written consent of lessor.

C. Lessor may withhold consent to an assignment or sublease of the demised premises in lessor's sole discretion.

SECTION THIRTEEN. BREACH OR DEFAULT

Lessee shall have breached this lease agreement and shall be considered in default under this lease agreement if: (1) lessee fails to pay any rent when due and does not make the delinquent payment within five days after receipt of notice from lessor; or (2) lessee fails to perform or comply with any of the covenants or conditions of this lease agreement and such failure continues for a period of ten days after receipt of notice from lessor in the fashion described in Section 21 below.

SECTION FOURTEEN. LESSOR'S REMEDIES

In the event of a breach of this lease agreement as set forth in SECTION THIRTEEN above, the rights of lessor shall be as follows:

A. Lessor shall have the right to cancel and terminate this lease agreement, as well as all of the right, title, and interest of lessee under this lease agreement, by giving to lessee not less than five days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this lease agreement and the right, title, and interest of lessee under this lease agreement shall terminate in the same manner and with the same force and effect, except as to lessee's liability, as if the date fixed in the notice of cancellation and termination were the end of the lease term.

B. Lessor may elect but shall not be obligated to make any payment required of lessee in this lease agreement or comply with any agreement, term, or condition required by this lease agreement to be performed by lessee. Lessor shall have the right to enter the demised premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied. However, any expenditure by lessor incurred in any such correction of a default shall not be deemed to waive or release lessee's default or lessor's right to take any action as may be otherwise permissible under this lease agreement in the case of any default.

C. Lessor may reenter the demised premises immediately and remove the property and personnel of lessee, and store the property in a public warehouse or at a place selected by lessor, at the expense of lessee. After reentry lessor may terminate this lease agreement on giving five days' written notice of termination to lessee. Without the notice, reentry will not terminate this lease agreement. On termination, lessor may recover from lessee all damages proximately resulting from the breach, including the cost of recovering the demised premises and the worth of the balance of this lease agreement over the reasonable rental value of the demised premises for the remainder of the lease term, which sum shall be immediately due lessor from lessee.

After reentry, lessor may relet the demised premises or any part of the demised premises for any term without terminating this lease agreement, at the rent and on the terms as lessor may choose. Lessor may make alterations and repairs to the demised premises. The duties and liabilities of the parties if the demised premises are relet as provided in this paragraph shall be as follows:

1. In addition to lessee's liability to lessor for breach of the lease agreement, lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by lessor under the new lease agreement and the rent installments that are due for the same period under this lease agreement.

2. Lessor shall have the right to apply the rent received from reletting the premises (a) to reduce lessee's indebtedness to lessor under this lease agreement, not including indebtedness for rent, (b) to expenses of the reletting and alterations and repairs made, (c) to rent due under this lease agreement, or (d) to payment of future rent under this lease agreement as it becomes due.

If the new lessee does not pay a rent installment promptly to lessor, and the rent installment has been credited in advance of payment to the indebtedness of lessee other than rent, or if rentals from the new lessee have been otherwise applied by lessor as provided for in this section, and during any rent installment period, are less than the rent payable for the corresponding installment period under this lease agreement, lessee shall pay lessor the deficiency, separately for each rent installment deficiency period and before the end of that period. Lessor may at any time after a reletting terminate this lease agreement for the breach on which lessor had based the reentry and subsequently relet the premises.

D. After reentry, lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of lessee, and, if necessary to collect the rents and profits the receiver may carry on the business of lessee and take possession of the personal property used in the business of lessee, including inventory, trade fixtures, and furnishings, and use them in the business without compensating lessee.

SECTION FIFTEEN. UNLAWFUL DETAINER AND ATTORNEYS' FEES

In case suit shall be brought for an unlawful detainer of the demised premises, for the recovery of any rent due under the provisions of this lease agreement, or for lessee's breach of any other condition contained in this lease agreement, lessee shall pay to lessor reasonable attorneys' fees that shall be fixed by the court. Any such attorneys' fee shall be deemed to have accrued on the commencement of the action and shall be paid on the successful completion of the action by lessor. Lessee shall be entitled to attorneys' fees in the same manner if judgment is rendered for lessee.

SECTION SIXTEEN. REMEDIES OF LESSOR CUMULATIVE

The remedies given to lessor in this lease agreement shall be cumulative, and the exercise of any one remedy by lessor shall not be to the exclusion of any other remedy.

SECTION SEVENTEEN. GOVERNING LAW

This lease agreement shall be governed by, construed, and enforced in accordance with the laws of the State of West Virginia.

SECTION EIGHTEEN. NO WAIVER

Waiver by lessor of any breach of any covenant or duty of lessee under this lease is not a waiver of a breach of any other covenant or duty of lessee, or of any subsequent breach of the same covenant or duty.

SECTION NINETEEN. ENTIRE AGREEMENT

This lease agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this lease agreement shall not be binding upon either party except to the extent incorporated in this lease agreement.

SECTION TWENTY. MODIFICATION OF AGREEMENT

Any modification of this lease agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

SECTION TWENTY-ONE. NOTICES

A. All notices, demands, or other writings in this lease agreement provided to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

If to lessor: City of Morgantown
 c/o City Manager
 389 Spruce Street
 Morgantown, WV 26505

If to lessee: Friends of Deckers Creek, Inc.
c/o Holly Purpura
1451 Earl L. Core Road
Suite 4
Morgantown, WV 26505

B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

SECTION TWENTY-TWO. COUNTERPARTS

This lease agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

SECTION TWENTY-THREE. SECTION HEADINGS

The titles to the sections of this lease agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this lease agreement.

The parties have executed this lease agreement in Morgantown, Monongalia County, West Virginia the day and year first set forth above.

LESSOR: City of Morgantown

By _____
Jeff Mikorski
City Manager

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Jeff Mikorski, City Manager of the City of Morgantown, West Virginia.

My commission expires: _____.

Notary Public in and for
said State and County

LESSEE:

By _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by ____, member of _____.

My commission expires: _____.

Notary Public in and for
said State and County

Schedule 1 – Lessee Identification of Defects

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH MORGANTOWN
THEATER COMPANY FOR SPACE AT THE METROPOLITAN THEATER**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, leasing space at the Metropolitan Theater to Morgantown Theatre Company.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

METROPOLITAN THEATRE LEASE AGREEMENT

**CITY OF MORGANTOWN
METROPOLITAN THEATRE
MORGANTOWN, WEST VIRGINIA**

THIS AGREEMENT, made this _____ day of _____, 2015, by and between

THE CITY OF MORGANTOWN ,
389 SPRUCE STREET,
MORGANTOWN, WEST VIRGINIA 26505,
a municipal corporation, hereinafter referred to as the “City,”
as LESSOR

and

MORGANTOWN THEATRE COMPANY, Inc.
276 WALNUT STREET
MORGANTOWN, WV 26505,
A West Virginia Nonprofit Corporation
as LESSEE

WHEREAS, the City owns, controls, and operates a theatre known as the “Metropolitan Theatre,” hereinafter referred to as “Theatre,” located in the City of Morgantown, Monongalia County, West Virginia; and

WHEREAS, LESSEE is a nonprofit, youth-focused theatre company devoted to teaching theatre arts in a supportive, inclusive, and enthusiastic environment that encourages teamwork and nurtures self-confidence; and

WHEREAS, LESSEE desires to lease from City a portion of the Theatre for theatre company operations upon the terms described in this Agreement;

NOW THEREFORE, the City and the LESSEE hereby mutually agree, as follows:

ARTICLE I

DEFINITIONS

- 1.1 “Agreement” shall mean the contract, including any and all attachments, between the City and LESSEE, for the right, privilege and obligation to use such Theatre property as

defined herein for the conduct of Morgantown Theatre Company, Inc., business, including but not limited to rehearsals, workshops, classes, presentations, demonstrations, set construction, and summer camps under the terms and conditions expressly set forth herein.

- 1.2 “Assigned Area” shall mean the area or areas at the Theatre designated by this Agreement and the Exhibits thereto as the place or places where the business of LESSEE may be conducted, as designated by the City.
- 1.3 “LESSEE” shall mean Morgantown Theatre Company, Inc.
- 1.4 “Semester” shall mean period of instruction provided by LESSEE which typically consists of a six (6) month “Fall/Winter Semester” (September through February) and a five (5) month “spring Semester” (February through June).
- 1.5 “Summer Camp” shall mean period of instruction provided by LESSEE during the months of June, July and August.
- 1.6 “Annual Rental Payment” is the amount of money due the City annually from LESSEE, in consideration of the use of the Assigned Area. Payment will be made on a monthly basis according to the terms of this Agreement.
- 1.7 “Year” shall mean Agreement year unless otherwise specified.
- 1.8 “Metropolitan Theater Improvement Fund” shall be the fund created by a one dollar charge per ticket and/or entrant to be collected by the Morgantown Theater Company for any performance that takes place in the Metropolitan Theater with the involvement of Morgantown Theater Company.

ARTICLE II

ASSIGNED AREA

- 2.1 The Assigned Area, as shown on Exhibit “A,” located in two (2) rooms at the lower mid-level of the “THEATRE,” shall consist of approximately 2,790 square feet of unimproved space.
- 2.2 It is understood that the area(s) being leased to “LESSEE” shall not include any area which is underneath the sidewalk in front of the “THEATRE.”

ARTICLE III

TERM

3.1 This Agreement shall be effective and binding upon execution. The original term of this Agreement shall be for a term beginning on November 1, 2015 and extending until midnight on the day preceding the third anniversary of such date, provided that either of parties to this lease gives to the other, three months before the latter date, notice in writing of the party's intention to terminate this lease on that date. Otherwise this lease will continue in force for another term of one year, and in the same manner from year to year ("Term"), including all terms and conditions in this lease, until one of parties terminates this lease by notice in writing in some ensuing year in the manner described above which notice terminates this lease at the end of year for which premises are then held unless sooner terminated or extended as herein provided.

3.2 It is the mutual intent of the parties that this Agreement remains in effect for the full term, subject to each party's rights on breach.

ARTICLE IV

USES AND PRIVILEGES

4.1 The "LESSEE" has the right, privilege, and obligation to operate and manage its theatre company in the Assigned Area for the conduct of its business. The rights above shall be exclusive as to the "LESSEE" only within the Assigned Area during the term of this Agreement.

4.2 "LESSEE" is entitled to use the lobby, main stage, house, dressing rooms, or light and sound facilities of the "THEATRE," for plays, musicals or other theatrical presentation for a total of fifteen (15) days of usage by "LESSEE" per year, which includes public performances, set construction, technical rehearsals, and dress rehearsals. The above-stated days of usage by "LESSEE" will be scheduled with the Theatre Manager at the beginning of each year. "LESSEE" will be responsible for cleaning the "THEATRE" after each performance and will not be assessed a "cleaning cost" fee by "CITY." "LESSEE" will not be assessed a "loss/damage deposit" pursuant to this provision except pursuant to separate agreement with the Morgantown Board of Parks and Recreation Commissioners ("BOPARC") or succeeding entity authorized to manage Theatre operations and lease performance space in the Theatre.

4.3 "LESSEE" shall collect the Metropolitan Theater Improvement Fund charge of one dollar (\$1.00) per each ticket sold and/or entrant to any and all performances or operations conducted with the involvement of "LESSEE" at the "THEATRE." "LESSEE" shall account for all such tickets, entrants, and funds in a manner acceptable to "CITY," which shall include, but not be limited to, records identifying each production or event, the number of tickets sold, the number of entrants, and the amount of fees collected. "LESSEE" shall hold the funds in trust for remittance to "CITY" as provided in this Agreement. "CITY" shall have the right to inspect the records, including financial records, required by this Section upon reasonable notice to "LESSEE."

4.4 "LESSEE" shall have reasonable rights of ingress and egress from the main entrances of the "THEATRE" to its Assigned Area at any time of the day. Such rights of ingress and egress shall apply to "LESSEE'S" employees, guests, patrons, invitees, suppliers and other authorized individuals. "LESSEE" shall be wholly responsible for its Assigned Area locks and keys.

4.5 "LESSEE" agrees not to use, or suffer or permit any person to use, the Assigned Area or any part thereof, for any illegal purposes, or for any purpose in violation of any Federal, or State, or local laws, rules, orders, regulations or ordinances now in effect or hereafter enacted or adopted. Any violation of this provision shall constitute a breach by "LESSEE" and the City shall be entitled to the remedies for breach stated in this Agreement and any other remedy provided by law.

ARTICLE V

OPERATIONAL STANDARDS

5.1 The "CITY'S" City Manager and Theatre Manager shall have the right to determine the "LESSEE'S" compliance with all operational conditions. "LESSEE'S" failure or refusal to comply with these Operational Standards shall be deemed a default in their performance hereunder and may be grounds for termination of this Agreement.

5.2 "LESSEE" shall make all reasonable efforts to maintain and develop business conducted by it in the "THEATRE."

5.3 "LESSEE" agrees to operate its theatre company in a highly efficient and professional manner and to conduct its operations in such a manner as to win public esteem.

5.4 All operations shall be supervised at all times by an active, qualified competent manager or a qualified subordinate in the manager's absence. The manager or qualified subordinate shall be available at the Assigned Area during all hours in operation.

5.5 "LESSEE" shall employ and maintain, at its expense, a sufficient number of employees, help and labor as may be necessary to provide, at all times, effective service required or authorized in this Agreement. "LESSEE" shall ensure and control the professional conduct, demeanor and appearance of its employees and representatives.

5.6 All personnel employed by "LESSEE" shall be neat, clean and courteous at all times. No improper actions or language shall be permitted while in the Assigned Areas.

5.7 "LESSEE" shall comply with all applicable laws, codes, rules, and regulations and shall cooperate with all local health and fire officials.

5.8 "LESSEE" shall remove and dispose of all garbage, waste and debris from the Assigned Area and keep the Assigned Area occupied under this Agreement in a clean and sanitary condition and in conformity with all laws and rules and regulations pertaining to sanitation and public health.

ARTICLE VI

RENTS, FEES AND ACCOUNTABILITY

6.1 Annual Rental Payment – In consideration of the rights, privileges, and obligations granted by this Agreement, "LESSEE" agrees to pay the "CITY," for the initial three-year term of this Agreement, an annual rental payment of Six Thousand Dollars (\$6,000.00) plus all funds collected for the Metropolitan Theater Improvement Fund. The Annual Rental Payment – less the Metropolitan Theater Improvement Fund – for each year beyond the initial term shall increase by an amount equal to the proportional increase in the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) for all items over the twelve-month period prior to the start of the new yearly term; provided, that in no event shall the Annual Rental Payment increase by an amount less than One Percent (1%) of the prior year Annual Rental Payment.

6.2 Rental Payments Due – Beginning November 1, 2015 and continuing on or before the first (1st) day of each month thereafter during the term of this Agreement, "LESSEE" shall pay to the "CITY" one-twelfth (1/12) of the Annual Rental Payment, including all funds collected for the Metropolitan Theater Improvement Fund during the preceding calendar month.

6.3 Payments Made To – All payments due to the "CITY" from "LESSEE" shall be by check, made payable to the following: "Metropolitan Theatre."

6.4 Place of Payment – All payments due to the "CITY" from "LESSEE" shall be delivered to the following:

City of Morgantown
City Manager's Office
389 Spruce Street
Morgantown, WV 26505

6.5 Delinquency Charge – A delinquency charge of five percent (5%) per month shall be added to payments which are received more than fifteen (15) days after the due date for such payment.

ARTICLE VII

IMPROVEMENTS TO ASSIGNED AREA

7.1 Inventory – Prior to the occupancy by “LESSEE,” the parties shall make an inventory of all equipment furnished by the “CITY,” if any, which the “LESSEE’S” desire to remain within the Assigned Area. An inventory list of that equipment shall be signed by the “LESSEE” as being received. The “CITY” may at its discretion furnish any additional equipment it may deem necessary and in the event such additional equipment is furnished, it shall be added to the equipment inventory and receipted for in writing by “LESSEE.” At the expiration or termination of this Agreement, all such equipment shall be returned to the “CITY” in good operating condition, except for reasonable wear and tear. All damaged or missing items shall be replaced with like equipment or with equipment acceptable to the “CITY.”

7.2 Improvements to Assigned Area by “LESSEE” – “LESSEE” may alter, amend, or improve the Assigned Area only with the prior written consent of City, which shall not be unreasonably withheld.

7.3 Ownership of Improvements – All improvements, additions and alterations made to the Assigned Area by the “LESSEE” shall be and remain the property of the “LESSEE” during the term of this Agreement. Upon termination of this Agreement for any reason said improvements, less furniture and readily removable equipment, shall become the property of the “CITY.”

7.4 Removal or Demolition of Improvements – The “LESSEE” shall not remove or demolish, in whole or in part, any improvements upon the Assigned Area without the written consent of the “CITY.” Consent may be conditioned upon the obligation of “LESSEE” to replace the same with a specified improvement. The “CITY” will not withhold consent unreasonably.

7.5 Signage – The “LESSEE” may, at its own expense, install and operate necessary and appropriate identification signs at the “THEATRE,” upon the written approval of the “CITY,” which may be given or withheld in the discretion of the City. Any such signage must be in conformance with regulations promulgated pursuant to the National Historic Preservation Act. Such approval shall be subject to revocation by the “CITY” at any time.

ARTICLE VIII

MAINTENANCE AND REPAIRS

8.1 "LESSEE" agrees to provide at its own expense such maintenance, custodial, and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Area.

8.2 "LESSEE" agrees to maintain and make necessary repairs to the interior of all of its Assigned Area and all equipment furnished by the "CITY," as identified by Paragraph 7.1, the fixtures and equipment therein and appurtenances thereto including, without limitation, the interior windows, doors and entrances, storefronts, signs, floor coverings, interior walls and ceiling, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by "LESSEES" and any lighting tubes or bulbs within the Assigned Areas. "LESSEE" agrees to keep and maintain in good and safe condition its electrical equipment and the plumbing fixtures located at or within its Assigned Area.

8.3 City shall be responsible for repair and replacement of fixtures or improvements for which LESSEE is not responsible pursuant to Paragraph 8.2, except when repair or replacement is required as a result of operations or activities of LESSEE or its agents, employees, representatives, or persons permitted at the Theatre by LESSEE.

8.4 All repairs and maintenance done by "LESSEE" or on its behalf shall be of first class quality in both materials and workmanship. All repairs shall be made in conformity with the rules and regulations prescribed from time to time by Federal, State and/or local authorities having jurisdiction over the work in "LESSEE'S" Assigned Areas.

8.5 The "CITY'S" duly appointed representatives shall have the right to enter "LESSEE'S" Assigned Area to:

- (a) Inspect the Assigned Area at reasonable intervals during the "LESSEE'S" regular business hours or at any time in case of emergency, to determine whether the "LESSEE" has complied with and is complying with the terms and conditions of the Agreement. The "CITY" may, at its discretion, require the "LESSEE" to effect repairs at the "LESSEE'S" own cost; and
- (b) Perform any and all things which "LESSEE" is obligated to do and has failed to do after providing "LESSEE" with fifteen (15) days' written notice to act, including maintenance, repairs and replacements to "LESSEE'S" Assigned Area. The cost of all labor, materials and overhead charges required for performance of such work will be paid by the "LESSEE" to the "CITY" within ten (10) days following receipt of invoice for said charges by "LESSEE."

ARTICLE IX

UTILITIES

9.1 The "CITY" shall pay all charges for electric, water, garbage disposal and natural gas utility services to the Assigned Area.. "LESSEE" shall be expected to exercise all practical economy and failure to do so will constitute unsatisfactory operations. The "CITY" shall have

the right to insist upon and institute practices, which it deems necessary, which "LESSEE" shall be expected to implement to insure misuse or abuse of this privilege.

ARTICLE X

SNOW AND ICE REMOVAL

10.1 The "CITY" shall be responsible for snow and ice removal of the street-level sidewalk area in front of the "THEATRE."

ARTICLE XI

LIABILITY, INDEMNITY AND INSURANCE

11.1 Each party hereto shall give to the other prompt and timely written notice of any claim made or suit instituted coming to its knowledge which in any way directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

11.2 It is expressly understood and agreed by and between the parties hereto that the "LESSEE" is and shall be an independent contractor and operator, responsible to all parties for all of its acts or omissions, and the "CITY" shall in no way be responsible therefore. The "LESSEE" and its officers, directors, employees, and agents, shall not be construed to be employees or agents of the "CITY." It is further agreed that in its use and enjoyment of the "THEATRE" or premises and facilities herein referred to, the "LESSEE" will indemnify and save harmless the "CITY," and its members, officers, City Council, employees and agents from any and all claims, liabilities, causes of actions or losses, (including the cost of defense) that may result in liability to the "CITY" from any actions or omissions on the part of the "LESSEES," and/or their employees, authorized agents or representatives, and shall always hold the "CITY," and its members, officers, City Council, employees and agents harmless from same. The "LESSES" shall save harmless the "CITY," and its members, officers, City Council, employees and agents from all liabilities, claims, judgments, costs, and expenses, including all costs of defense, which may in any manner arise against the "CITY," and its members, officers, City Council, employees and agents in consequence of the granting of this Agreement, or which in any way may result from the operations or activities of the "LESSEE," its agents, customers, servants, or employees.

11.3 During the term, either original or extended, of this Agreement, the "LESSEE" shall effect and maintain, with a company satisfactory to the "CITY,"

- (a) Public Liability and Property Damage insurance including, if deemed necessary by the "CITY," Automobile Liability Insurance, covering claims for damages for bodily injury, including accidental death, and for claims for property damage which may arise from operations under this Agreement, whether such operations

are by "LESSEES" or their duly authorized agents, representatives or employees. The "LESSEE'S" public liability insurance shall be in a minimum amount of one million dollars (\$1,000,000) for each occurrence and five hundred thousand dollars (\$500,000) for property damage covering the acts of the "LESSEE," its agents and employees. The City shall be named as an additional insured on each policy of insurance required under this Agreement. "LESSEE" agrees to deliver copies of any and all policies of insurance and certificates of said insurance required by this Agreement to the Theatre Manager upon the execution of this Agreement and such policies of insurance or certificates of insurance shall comply with the requirements of said Theatre Manager. Additionally, the "CITY" shall be notified in writing by the insurer at least thirty (30) days prior to the cancellation of any policies of public liability insurance required under the terms and conditions of this Agreement. "LESSEE" agrees to insure that "CITY" and its officers, agents, and employees are held harmless against any and all claims arising out of "LESSEE'S" services at the "THEATRE."

- (b) Worker's Compensation and Employer's Liability Insurance – "LESSEE" shall maintain Workers Compensation and Employer's Liability Insurance in the amounts and form required by the laws of the State of West Virginia.

11.4 "LESSEE" shall not use or permit the storage of any illumination oils, lamps, turpentine, benzene, naptha, and other similar substances, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance in the State of West Virginia.

11.5 During the term of this Agreement, the "CITY," at its sole discretion, shall have the right to adjust the minimum amounts of all liability coverage required hereunder.

ARTICLE XII

ASSIGNMENT, SUBLEASING AND CHANGE OF OWNERSHIP

12.1 "LESSEE" shall not assign, delegate, sublease or transfer this Agreement or any other right, privilege, or license conferred by this Agreement, or any duty or obligation stated herein, either in whole or in part, or sublet or in any manner encumber the Assigned Area or any portion thereof, except as otherwise provided in this Agreement, without obtaining in advance the written consent of the "CITY."

12.2 "LESSEE" must obtain the consent of the "CITY" to keep this Agreement in effect prior to any transfer or merger of ownership between the "LESSEE" and any other person or legal entity.

12.3 The "CITY" reserves the right to deny any assignment, subcontract, sublease, or acceptance of transfer of ownership for any reason it deems, in its sole discretion, to be in the best interest of the "THEATRE."

ARTICLE XIII

COMPLIANCE

13.1 "LESSEE," its officers, agents, servants, employees, contractors, licensees, and any other person which the "LESSEE" has the right to control, shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the Federal, State, County, and "CITY" governments which may be applicable to its operations at the "THEATRE."

13.2 "LESSEE" shall pay on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees, which are now or may hereafter be levied upon the Assigned Area, or upon "LESSEE'S" or upon the business conducted on the Assigned Area, or upon any of the "LESSEE'S" property used in connection therewith; and shall have and maintain in current status all Federal, State, and local licenses and permits required in the operation of the business conducted by the "LESSEE."

13.3 "LESSEE" agrees to pay, or guarantee payment of all lawful fines and penalties as may be assessed by the "CITY" or against the "CITY" for violations of Federal, State, or local laws, ordinances, rulings or regulations, caused by "LESSEE'S" acts or omissions or those of their employees or agents, within thirty (30) days of written notice of such fines or penalties.

13.4 "LESSEE," its employees and agents shall at all times comply with rules and regulations for the "THEATRE" as may be adopted from time to time by the "CITY" or any board or authority established by the City. In the event that there is a conflict between the provisions of this Agreement and such rules and regulations, this Agreement shall govern unless otherwise directed by the "CITY."

ARTICLE XIV

CANCELLATION BY "LESSEE"

14.1 In addition to all other remedies available to the "LESSEE," this Agreement shall be subject to cancellation by the "LESSEE" by giving a thirty (30) day written notice to the "CITY," should any one or more of the following events occur, provided however, that none of the compensation and fees which are to be paid by "LESSEE" herein will be refunded to "LESSEE."

- (a) The complete destruction of all or a substantial portion of the Assigned Area from a cause other than the negligence or omission to act of "LESSEE," its subcontractors, agents or employees, and the failure of the "CITY" to repair or reconstruct said premises within six (6) months after such destruction.
- (b) The breach by the "CITY" in the performance of any covenant or any Agreement required to be performed by the "CITY" and the failure of the "CITY" to commence

to remedy such breach for a period of thirty (30) days after receipt of notice of such breach by "CITY" from "LESSEE."

14.2 In addition to the foregoing, "LESSEE" may cancel or terminate this Lease Agreement for any reason by giving "CITY" a sixty (60) days advance written notice of cancellation.

ARTICLE XV

CANCELLATION BY "CITY"

15.2 In addition to all other remedies provided herein or at law, "CITY" may cancel this Agreement by giving a thirty (30) day written notice to the "LESSEE" should any one or more of the following events occur:

- (a) "LESSEE" fails to make any payments required hereunder when due to the "CITY" or within ten (10) days after receipt of written notice from the "CITY" of non-payment.
- (b) "LESSEE" permits to continue, for a period of three (3) days after receipt of written notice from the City or Theatre Manager, any unsafe or unsanitary conditions or practices in or about the Assigned Area; provided however, if the unsafe or unsanitary condition is such as to require replacement, repair, or construction, "LESSEE" shall have a reasonable time in which to correct said condition, but must begin action on the matter immediately upon receipt of said notice.
- (c) The interest of "LESSEE" under this Agreement is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the prior written consent of the "CITY."
- (d) "LESSEE" becomes, without the prior written approval of the "CITY," a successor or merger corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution.
- (e) "LESSEE" shall neglect or fail to perform and observe any other promise, covenant or condition set forth in this Agreement within ten (10) days after receipt of written notice of breach from the "CITY" or the Theatre Manager, except where fulfillment of such obligation requires activity over a period of time and "LESSEE" has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance without interruption except for causes beyond its control.
- (f) The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not

vacated, dismissed or set aside within a period of ninety (90) days and which does, or as a direct consequence of such process will, interfere with "LESSEE'S" use of the Assigned Area or with its operations under this Agreement.

- (g) "LESSEE" becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States, or under any State laws, or consent to the appointment or a receiver, trustee or liquidator of all or substantially all of their property or their property located within the Assigned Area.
- (h) A petition under any part of the Federal bankruptcy laws, or an action under any present or future insolvency law or statute is filed against "LESSEE" and is not dismissed within ninety (90) days.
- (i) By or pursuant to, or under the authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of "LESSEE," and such possession or control continues in effect for a period of ninety (90) days.
- (j) Cessation or deterioration of service of such a degree for a period of time which, in the sole discretionary opinion of the "CITY," materially and adversely affects the operations and services required to be performed by "LESSEE" under this Agreement.
- (k) Any lien is filed against the Assigned Area because of any act or omission of "LESSEE" and such lien is not removed, enjoined, or a bond for satisfaction of such lien is not posted within thirty (30) days.
- (l) "LESSEE" abandons, deserts, vacates or discontinues its operation of the business herein authorized for a period of five (5) days without prior written consent of the "CITY."

15.3 Acceptance by the "CITY" of any rental payments specified herein, after a breach of any of the terms of this Agreement, shall not be deemed a waiver of any right on the part of the "CITY" to cancel this Agreement on account of such breach. Failure of the City to exercise any

remedy provided under this Agreement shall not constitute a waiver of any available remedy for future violations.

15.4 The "CITY" may reenter the Assigned Area and may remove all persons and property from same upon the termination of the Agreement or the date of reentry specified in a written notice to "LESSEE" by City pursuant to this Agreement. Such date of reentry shall not be less than thirty (30) days from date of said notice. Upon any removal of "LESSEE'S" property by "CITY" hereunder, said property may be stored at a public warehouse or elsewhere at "LESSEE'S" sole cost and expense.

15.5 "LESSEE" hereby pledges and assigns to the "CITY" all furniture, equipment, fixtures, goods and chattels of "LESSEE," which shall or may be brought or put on said Assigned Area, as security for the performance of "LESSEE'S" obligations as herein provided, and "LESSEE" agrees that such lien may be enforced by distress, foreclosure or as otherwise provided by law, and does hereby agree to pay attorney's fees, together with all costs incurred by the "CITY."

ARTICLE XVI

GENERAL PROVISIONS

16.1 Nondiscrimination

- (a) The "LESSEE," for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree:
- (1) That no person, on the grounds of race, color, religion, creed, political ideas, sex, age, or handicap, shall be excluded from participation in, denied the benefit of, or be otherwise subject to discrimination in the use of said facilities;
 - (2) That in the construction of any improvements and the furnishing of services, no person, on the grounds of race, color, religion, creed, political ideas, sex, age, or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities.
- (b) The "LESSEE" shall furnish its accommodations and/or services on a fair, equal, and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable, and nondiscriminatory fees for each unit of services; however, the "LESSEE" may be allowed to make reasonable discounts to other similar type of fee reductions on a nondiscriminatory basis.

16.2 Waiver of Damages – The "LESSEE" hereby expressly waives any and all claims for compensation for any and all loss or damages sustained by reason of any defect, deficiency or impairment of the electrical apparatus, water supply equipment, equipment or wires used in the Assigned Area, herein mentioned, or by reason of any loss or impairment of light, current or

water supply which may occur from time to time for any cause, or for loss or damage sustained by the "LESSEE" resulting from fire, water, windstorm, tornado, civil commotion or riots and the "LESSEE" hereby expressly waives all rights, claims and demands and forever releases the "CITY," its officers, employees and agents, from any and all demands, claims, actions, and causes of action arising from any cause.

16.3 Non-waiver of Rights – Failure of the "CITY" insist upon strict performance of any provision or condition of this Agreement, or to exercise any right herein, shall not operate or be construed to be a waiver of such condition or right in any other instance.

16.4 Removal of Personal Property – Upon the expiration of the term herein specified, if the "LESSEE" has made full payment under this Agreement, "LESSEE" may remove its personal property at a time approved by City in writing, and shall do so within thirty (30) days after the end of the terms herein stated and on failure to do so, the "CITY" by its officers and agents, may cause the same to be removed and stored at the cost and expense of the "LESSEE" and the City shall have a lien thereon in the amount of the cost and expense of such removal and storage until paid and may sell such personal property and reimburse itself for such cost and expense plus the expense of sale.

16.5 Notices – Notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Notices in writing may also be delivered by personal service of said notice to the agents for each party at the addresses listed below. Either party shall have the right, by giving notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to the "CITY" shall be delivered as follows:

City of Morgantown
City Manager's Office
389 Spruce Street
Morgantown, WV 26505

Notices to "LESSEE" shall be deemed sufficient if in writing and mailed, registered or certified, postage prepaid, addressed to "LESSEE" at:

Hilary Phillips
Executive Director
Morgantown Theatre Company
369 High Street
Morgantown, WV 26505

16.6 Right to Develop "THEATRE" – It is further covenanted and agreed that the "CITY" reserves the right to further develop or improve the "THEATRE," regardless of the desires or views of the "LESSEE" and without interference or hindrance. The "CITY" shall have the right

to construct or install over, in, under or through the Assigned Area new lines, pipes, mains, wires, conduit and equipment.

16.7 Relationship of Parties – Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent, partners, joint venture, or any other similar such relationship, between the “CITY” and “LESSEE.” The parties shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of the “CITY” and “LESSEE.” This Agreement is not intended to and shall not be construed to vest in the “LESSEE” any title, tenure or any property rights in the real estate, fixtures or personal property belonging to the “CITY” now located, or which may hereafter be located, in or around the Assigned Area.

16.8 Amendment – This Agreement may be amended only by a writing signed by both parties.

16.9 Termination – Upon termination or cancellation of this Agreement for any cause, the “LESSEE” shall vacate the Assigned Area and shall not remove any of the “LESSEE’S” supplies, property or equipment from the Assigned Area until all license fees and other sums due the “CITY” have been paid.

ARTICLE XVII

ENTIRE AGREEMENT

17.1 The parties hereto understand and agree that this instrument, including the items specifically incorporated by reference into it consistent with the terms of this document, and its attached Exhibits contain the entire Agreement between the parties. The parties further understand and agree that neither party nor its agents have made representations or promises with respect to this Agreement except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement, any other writing or parole agreement with the other party being expressly waived.

THE CITY OF MORGANTOWN,
A municipal corporation,

MORGANTOWN THEATRE
COMPANY, a nonprofit corporation,

“CITY”

“LESSEE”

By: _____
City Manager

Its President