AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT, AS LESSOR, TO LEASE SPACE AT THE FORMER WOODBURN SCHOOL, NOW OWNED BY THE CITY, TO THE MOUNTAINEER BOYS AND GIRLS CLUB, INC., LESSEE.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the attached lease agreement by and on behalf of the City of Morgantown.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

CONTRACT OF LEASE

THIS CONTRACT OF LEASE ("Lease"), made this 6th Day of November, 2013, by and between City of Morgantown, a municipal corporation, hereinafter referred to as "Lessor," and Mountaineer Boys and Girls Club, Inc., a West Virginia Non-Profit Corporation, hereinafter also referred to as "Lessee."

In consideration of the full and complete performance of the covenants, terms, and provisions contained herein, The Lessor and Lessee agree to the following:

1. BASIC LEASE PROVISIONS

The Basic Lease Provisions have been presented as follows for the purpose of restating certain terms of the Lease in a summary format. Their being so presented is not in derogation of the importance of any other provisions of this Lease, and shall not imply that such Basic Lease Provisions are to be construed in any other manner than in the context of all of the other terms and conditions of this Lease, taken as a whole.

a. Premises: Address: 918 Forney Street, Morgantown, WV
Size: 6,116 square feet
Defined Area: Former elementary school first floor.

b. Rent:

Annual Cost per Square Foot:	$1.96
Cost per Month:	$1,000
Cost per Year:	$12,000

c. Initial Term of Lease: Beginning on November 6, 2013, and ending on June 30, 2015.

d. Renewal Option: Automatic Annual Renewals for the months of July through June unless canceled by either party, with provision of four months' notice prior to June 30th. Rent for each annual renewal period to be adjusted by CPI.

e. Right of First Refusal for Additional Space: NONE

f. Lessee: Mountaineer Boys and Girls Club, Inc.

2. PREMISES; COMMON AREAS

The Lessor hereby leases to the Lessee, and Lessee hereby leases from Lessor, the leased premises described in Sections 1a above and as further described as follows ("Premises"):

Portions of a 9,108 square foot former elementary school, being the first floor containing approximately 3,579 square feet, and approximately 2,537 square feet identified as the old school gym, for a total of 6,116 rented square feet, located at 918 Forney Street, Morgantown, Monongalia County, West Virginia, as illustrated in Exhibit A. The leased premise shall also include the "shared use" of the basement lunchroom.

In addition, the Lessee, its employees, representatives, agents, customers, guests and invitees shall have the right to use all driveways, parking areas, sidewalks, lobbies, elevators, hallways, restrooms, and other common facilities and areas (collectively, "Common Areas"), if any, in or about the building containing said Premises, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will maintain the Common Areas in a clean, safe and sanitary condition and provide all necessary janitorial service, snow removal, maintenance and repair, and utilities to all Common Areas.

3. TERM

The initial term of this Lease, subject to the provisions hereof, shall begin on November 6, 2013 and end at midnight on June 30, 2015. PROVIDED HOWEVER, this Lease may be canceled by the Lessee as hereinafter provided in Sections 8, 10 and 21, before the end of the term. This Lease shall be considered renewed for each succeeding City fiscal year during the Term of the Lease unless this Lease is canceled by the Lessee before the end of the then current fiscal year pursuant to Section 21 hereunder.

4. RENT

The Lessee covenants that the Lessee shall pay rent unto the Lessor, as rent for the Premises herein leased and all Common Areas, the sum of One Thousand dollars ($1,000.00) per month, payable in arrears, upon receipt of invoice from the Lessor to the Lessee.. Invoices shall be prepared by the Lessor and provided to the Lessee for payment processing. Lessor shall also be provided reimbursement for a prorated share of certain expenses as further described in Section 8 a ("Additional Rent").

5. FIRST RIGHT OF REFUSAL FOR ADDITIONAL SPACE – NONE

6. RENEWAL OPTION

After the initial Term, the Lease will automatically renew from year to year, for the months of July through June; provided, however, that either party may, at its option, cancel an upcoming renewal period by giving written notice unto the other 120 days prior to any June 30th of their desire for the expiration. Rent for subsequent renewal years shall increase by percentage of difference in the Consumer Price Index, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, based on US City Average, All Items, with comparison of the term start date to the month of April

of the expiring year. The new rental rate shall be officiated by correspondence and, unless there other changes to the Lease, shall not require an addendum to officiate.

7. UTILITIES AND OTHER RELATED SERVICES

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

(i) Utilities which are not separately metered, to be paid by the Lessor, who shall seek a fifty percent (50%) reimbursement as Additional Rent from the Lessee by separate invoice, providing evidence of payment made.

(ii) Custodial services in the common areas used by other tenants.

(iii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.

(iv) Snow removal, to be paid by the Lessor, who shall seek a fifty percent (50%) reimbursement as Additional Rent from the Lessee by 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) Custodial Services in the Premises.

(ii) Trash services, for which the Lessee may choose to partner with the neighboring tenants.

(iii) Telephone and internet connectivity services.

(iv) The Lessee shall have the right to rekey, install a key card access system, or any other security system for the Premises, using such security services provider as the Lessee and Tenant may choose in its sole discretion. The Lessee at its sole discretion, can elect to remove said system at any time, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal.

(v) Lessee agrees to schedule the use of the Community Room to Woodburn Neighborhood Association or other community groups that want to utilize their Community Room, unless Lessee is using the room for Boys and Girls Club business at that time/date or is unable to unlock the room at the time/date requested.

c. Interruption. 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) immediately terminate this Lease.

8. MAINTENANCE

The Lessor binds itself to maintain the Premises, including the structure of the Premises, both interior and exterior; the electrical, HVAC and plumbing fixtures and equipment; and the interior and exterior painting and flooring in a good and tenantable condition equal to that of the Premises as at the time possession thereof is delivered to the Lessee; included in the aforementioned obligation is the duty to replace HVAC filters and light bulbs on a regular schedule or upon request by the Lessee.

If the Lessor fails to maintain the interior and exterior structure of the Premises, and the electrical, HVAC and plumbing fixtures and equipment owned by the Lessor in a good and tenantable condition of repair, the Lessee shall request the Lessor, in writing, to correct any deficiency which may have occurred since possession of the Premises by the Lessee, provided, however, such deficiency was not caused by the neglect or acts of the Lessee. Upon refusal or neglect of the Lessor to comply with the Lessee's request for the repair or reinstatement of previously-existing conditions, the Lessee may, ten (10) days after receipt of such request by the Lessor, cause the repairs to be made 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. Provided however, any such repairs related to life and safety issues, including without limitation, broken windows, hot water heater, smoke detectors, carbon monoxide detectors shall be repaired immediately, or the Lessee may (i) cause the repairs to be made 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) immediately terminate this Lease.

Notwithstanding the foregoing, the Lessor is not responsible for maintenance of such fixtures and equipment as may be owned by the Lessee.

9. DAMAGE TO PREMISES BY FIRE, ETC.

It is agreed by and between the parties hereto that in the event the Premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Lessee would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this lease shall terminate. If only a part of the Premises shall be rendered untenable, leaving the remainder suitable for occupancy, the rental shall be proportionately abated until the Premises have been

repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the Premises. Any repairs undertaken must be completed within a reasonable length of time after the Lessor's decision. Should the Lessor decide not to repair the Premises, this Lease shall terminate, and the Lessee shall deliver possession of the Premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the Premises except for any unpaid rent through the final day of occupancy.

10. INDEMNIFICATION AND INSURANCE

Section 10.1 Lessee shall protect, defend, indemnify, and hold the Lessor and its representatives and employees completely harmless 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 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.

Section 10.2 Without limiting its liability as aforesaid, the Lessee shall carry insurance in the following minimum amounts during the term hereof, naming the Lessor as con-insured:

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

Section 10.3 Lessee shall provide the Lessor with certification of insurance through the term of this Agreement, evidencing such coverage to be in force.

Section 10.4 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.

11. SUITABILITY OF PREMISES

The Lessor warrants the Premises to be suitable for use for the conduct of Lessee's business., and that there shall be no liability on the part of Mountaineer Boys and Girls club, its officers, agents or employees for any loss or damage to the Premises, nor any liability on any individual by virtue of any of the provisions of this Lease,

whether caused by overloading the floors with equipment or otherwise installing fixtures and equipment commonly used in an office facility. Further, the Lessor warrants that the Premise compliant according to all local, state, and federal code requirements and all zoning ordinances.

a. Fire and Health Hazards. The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Lessee, its agents, employees or servants which any authorized public authority may order corrected or removed during the term of this lease. Upon refusal or neglect of the Lessor to comply with any such order, the Lessee may comply therewith and deduct the costs from monthly rentals payable thereafter to the Lessor until the Tenant is fully reimbursed therefore.

b. Environmental. The Lessor represents and warrants to the Lessee that there are no hazardous or unsafe substances in, on or under the Premises, building or Common Areas or the underlying real property, and agrees to indemnify, defend and hold harmless the Lessee, its affiliates, and their respective officers, agents and employees, against any and all claims, damages, costs, liabilities and expenses, including attorneys' fees, resulting from a breach of the Lessor's representations and warranties or from the presence of any hazardous or unsafe substances in, on or under the Premises, building, Common Areas or the underlying real property, as of the Start Date.

12. NEGLECT OF PREMISES

The Lessee covenants that it shall not commit waste on the Premises herein leased, and the Premises will be returned to the Lessor at the termination of this Lease in substantially as good condition as at the commencement thereof, damages from reasonable wear and tear, natural elements, normal depreciation and decay excepted.

13. TRANSFER OR ASSIGNMENT OF LEASE

The Lessee shall have the right to assign, reassign, or transfer this Lease contingent upon the prior written approval of the Lessor.

14. DEFAULT

In the event any party defaults in any of the covenants contained herein, the requesting party shall notify the other, in writing, of such default and if such default is not corrected within fifteen (15) days after receipt of notification, unless a shorter correction period is required elsewhere in this Lease, the requesting party may notify the other party that the Lease is terminated, without further obligation, and reenter/vacate the Premises herein leased.

15. TAXES AND ASSESSMENTS

The Lessor will pay taxes and assessments levied on the Premises during the term of this lease.

16. PARKING

The Lessor agrees to provide, at no additional cost to the Lessee, free employee and visitor parking spaces immediately adjacent to the Premises.

17. PROVISIONS FOR IMMEDIATE TERMINATION

In addition to the other events set forth herein which permit the immediate termination of this Lease, the Lessee shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty (30) days prior to the last day of the succeeding month,

18. MISCELLANEOUS

a. Notices. Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

Lessor
City of Morgantown
Attn: City Manager
389 Spruce Street
Morgantown, WV 26505
Phone: 304-284-7405
Fax: 304.284.7430
Email:
jmikorski@cityofmorgantown.org
After Hours Emergency Phone:
304.288.6717

Lessee
Mountaineer Boys and Girls Club, Inc.,
Address:
Attn: Denny Poluga
Morgantown, WV
Phone:
Fax:
Email

b. Holding Over. The Lessee shall have the right to hold over for up to three (3) months after the expiration of the Term upon the same terms and conditions, including Rent, as were applicable during the just expired Term. If the Lessee shall continue in possession of the Premises beyond said three (3) month holdover period, such continued possession shall be considered an extension of this Lease from month to month until terminated by either party as of the end of any calendar month on not less than thirty (30) days prior written notice, and during such month to month tenancy, all terms and conditions of this Lease shall remain in full force and effect.

c. Vacating Responsibilities. The Lessee has the right to remove all owned fixtures, furniture, and equipment and shall leave the facility free of all trash and debris, in broom clean condition, with all keys labeled and provided to the Lessor. The Premises will be returned to Lessor by Lessee in equal condition to that as originally occupied.

d. Quiet Enjoyment. The Lessor covenants that at the Start Date of this Lease, the Lessor was seized of said Premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever and that upon payment of the rentals as herein set forth, the Lessor will warrant and defend the title of the Lessee against any and all claims whatsoever, not arising hereunder, during the term of this Lease; that the Lessee shall, at all times during the term of this Lease, peaceably and quietly have, hold, and enjoy the Premises.

e. Force Majeure. If either party shall be delayed in the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, riots, insurrections, wars, catastrophic events or other reasons beyond the reasonable control of such party, then performance of such act shall be extended for a period equivalent to the period of such delay.

f. Authority. The Lessor hereby represents and warrants that it owns the building and underlying real property in fee simple. Each party represents and warrants that it is fully authorized to execute this Lease without obtaining the consent of any third party.

g. Binding Effect. All the terms and conditions of this Lease shall be binding upon and inure to the benefit of legal representatives, successors, and assigns of the parties.

h. Modification. This Lease shall not be amended or modified in any respect except by a writing which is duly executed by all parties.

i. Construction. The language used in this Lease was mutually negotiated by the parties and shall not be construed for or against either party. The headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way defining, limiting, modifying or amplifying the provisions hereof. Time is of the essence of this Lease and of every term, covenant, and condition hereof.

j. Severability. If any provision of this Lease is rendered void or invalid by the decision of any court or by the enactment of any Law, such provision will be deemed to have never been included herein and the remainder of the Lease shall continue in full force and effect.

k. Entire Agreement. This Lease constitutes the entire understanding between the parties. Any representation, obligation, term or condition not contained herein is not binding on the parties.

l. Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and which taken together, shall constitute one and the same Lease.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of lease.

LESSOR: City of Morgantown

By _____
Jeff Mikorski
City Manager

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

I _____, notary public in and for said county and state, do hereby certify that Jeff Mikorski, who as City Manager signed the foregoing lease for City of Morgantown, Lessor, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said corporation.

Given under my hand this _____ day of _____, 2013.

My commission will expire _____ 20__ .

_____
NOTARY PUBLIC

LESSEE: Mountaineer Boys and Girls Club, Inc.

_____
President