

AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING AN AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, THE MORGANTOWN BUILDING COMMISSION, AND THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, AS THE SAME APPLIES TO THE CITY OF MORGANTOWN TRANSFERRING ITS OWNERSHIP INTERESTS IN SPECIFICALLY IDENTIFIED REALTY LOCATED IN THE AREA COMMONLY KNOWN AS THE "STADIUM LOOP" TO THE WVU BOARD OF GOVERNORS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ALL OTHER RELATED DOCUMENTS NECESSARY FOR THE REALTY TRANSFER TO OCCUR.

The City of Morgantown hereby ordains that it authorizes its City Manager to not only execute the attached agreement by and on behalf of the City of Morgantown, but also, to execute related documents necessary for the realty transfer to occur.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AGREEMENT

by and among

**THE CITY OF MORGANTOWN, WEST VIRGINIA AND
MORGANTOWN BUILDING COMMISSION,
AS TRANSFERORS**

and

**WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST
VIRGINIA UNIVERSITY, A STATE INSTITUTION OF HIGHER EDUCATION,
AS TRANSFEREE**

Dated as of ____ • ____, 2012

WHEREAS, in furtherance of the parties' mutual desire to encourage development within the Loop Area and such other areas, Transferors desire to transfer to Transferee, and Transferee desires to acquire from Transferors, all of the Loop Parcels, upon the terms and conditions more particularly set forth herein; and

WHEREAS, there is currently pending in the United States Bankruptcy Court for the Northern District of West Virginia (the "Bankruptcy Court") in the Chapter 7 bankruptcy case of The Square at Falling Run, LLC (Case No. 1:11-bk-00753) (the "SFR Bankruptcy Case") an adversary proceeding with respect to that certain Ground Lease ("SFR Lease") dated April 17, 2008 between the Building Commission, the City and The Square at Falling Run, LLC (the "Adversary Proceeding"); and

WHEREAS, the consummation of the transactions contemplated hereby are subject to, among other conditions, the settlement and dismissal of the Adversary Proceeding and the termination of the SFR Lease.

NOW, THEREFORE, in consideration of the premises and mutual covenants, agreements, representations and warranties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

TRANSFER OF LOOP PARCELS AND RELATED ASSETS

1.1 Property to be Transferred. Subject to the terms and conditions set forth in this Agreement, at the Closing (as defined in Section 3.1 hereof), Transferors agree to convey, transfer, assign and deliver to Transferee, by apt and proper special warranty deeds, assignments and other instruments of conveyance and transfer satisfactory to Transferee and its counsel, and

7, of University Place, and being a parcel of real estate already owned by the Transferors prior to creation of "The Square at Falling Run Project".

(c) After the Closing, Transferee shall undertake and diligently pursue the following development initiatives:

(i) Within five years of the Closing Date, Transferee will begin construction of a project (herein, the "Loop Project") in the Loop Area and the area depicted on the map attached hereto as Exhibit A as the "Falling Run Road Area" (the "Falling Run Road Area") which will be an alternative project to The Square at Falling Run project originally contemplated in the Loop Area by The Square at Falling Run, LLC. Transferee anticipates that the total construction cost of the Loop Project subject to the City's business and occupation taxes (herein, "B&O taxes") will exceed \$60,000,000.

(ii) Transferee will develop projects (herein, the "College Park Projects") in that certain area of the City depicted on the map attached hereto as Exhibit A as the "College Park Area" (the "College Park Area").

(iii) Transferee will also develop not less than 20,000 square feet of dedicated retail, commercial and/or other rental space which will be subject to City B&O taxes in one or more of the following areas: the Loop Area, the College Park Area, the Falling Run Road Area, and that certain area depicted on the map attached hereto as Exhibit A as the "Sunnyside Area" (all of such retail, commercial and/or other rental space being hereinafter referred to collectively as the "Commercial Space").

(iv) Promptly after the Closing, Transferee will solicit one or more grants in an aggregate amount of not less than \$1,000,000 from various governmental agencies

(d) On August 31, 2026, Transferee shall pay to City (in its own capacity and on behalf of the Building Commission) the sum of \$4,200,000 (the "2026 Payment"), less the following credits:

(i) All B&O taxes paid to the City prior to August 31, 2026 for construction expenditures on the Loop Project in excess of \$30,000,000;

(ii) All B&O taxes paid to the City prior to August 31, 2026 for construction expenditures on the College Park Project;

(iii) All B&O taxes paid to the City prior to August 31, 2026 arising from and directly associated with any construction, retail, commercial, rental and other development activities located in, or with respect to the completion of, the Commercial Space; and

(iv) All Airport Grant Funds received or obtained prior to August 31, 2026 as a result of Transferee's direct solicitation efforts, or indirectly as a result of specifically identifiable efforts, contacts or commitments made by Transferee. The City and Transferee understand and agree that there may be instances when Airport Grant Funds are obtained through the joint efforts of such parties, and in such instances City and Transferee shall upon payment of such Airport Grant Funds agree on an allocation of the amount of credit from such payment to be applied to the 2026 Payment.

2.2 Post-Closing Reports. [On or by July 10, 2013,] and on or by the tenth (10th) day of each calendar quarter thereafter (*i.e.*, April 10, July 10, October 10 and January 10), the City shall account for and notify Transferee in writing of the City's receipt of all taxes and funds covered by and described in Sections 2.1(c)(i)-(iv) above during the immediately preceding quarter, and the City and Transferee shall annually, within 60 days following the end

(a) Transferors shall deliver to Transferee (in form and substance satisfactory to Transferee and its counsel) one or more special warranty deeds, bills of sale, assignments (including acceptances and acknowledgments thereof), endorsements, titles, and such other instruments of conveyance as may be reasonably requested by Transferee to transfer and convey the Assets to Transferee and to otherwise effect the consummation of the transactions contemplated by this Agreement and which are normal and customary in transactions of like kind;

(b) Transferors shall deliver to the title insurance company designated by Transferee affidavits, dated as of the Closing Date, in the form then required by such title insurance company to insure title at its regular rates in accordance with its title commitments;

(c) The City and Transferee shall execute and deliver to each other the Mutual Release and Cancellation Agreement with respect to that certain Memorandum of Understanding dated as of December 4, 2003, in the form attached hereto as Exhibit B;

(d) Transferee shall execute and deliver to MHA, if Transferee and MHA have agreed upon the form thereof, the New Easement;

(e) The City shall execute and deliver the Old Easement Conveyance to Transferee;

(f) Transferee shall have received evidence satisfactory to Transferee that the SFR Lease has been transferred to Transferee pursuant to the authority of the Bankruptcy Court in the SFR case, and that subsequent to Transferee's acquisition of the SFR Lease both Transferee and the City have terminated the SFR Lease; and

(g) Transferee shall deliver the Closing Payment to the City in its own capacity and on behalf of the Building Commission.

contemplated hereby have been duly authorized by all necessary legal proceedings on the part of such Transferor, including, but not limited to, the approval of The City Council of Morgantown, West Virginia, and no other corporate or legal proceedings are necessary to authorize this Agreement and the transactions contemplated hereby or to consummate the transactions contemplated hereby on behalf of Transferors. This Agreement has been duly executed and delivered by Transferors and constitutes a valid and binding obligation of Transferors, enforceable in accordance with its terms.

4.3 Compliance with Law. Except in such matters subject to the SFR Bankruptcy Case, including the Adversary Proceeding, neither Transferor has received any written orders, notices of investigation, assessments or any other notices from any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, that such Transferor or the Loop Parcels owned by it, or any part thereof, is in violation of any law, regulation, rule, order, decree or judgment applicable to the Loop Parcels. Each of the Loop Parcels owned by such Transferor is in compliance in all material respects with all applicable laws, regulations, rules, orders, judgments and decrees of any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, having jurisdiction over any of the Loop Parcels.

4.4 Environmental. To Transferors' actual knowledge, no hazardous materials have been used, discharged or stored on or about the Loop Parcels, and no such hazardous materials are now located on or below the surface of the Loop Parcels. As used herein, "hazardous materials" shall mean asbestos, oil as defined in the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, and any "hazardous substance," "hazardous materials" or "hazardous wastes" as defined or used in the Federal Water Pollution Prevention and Control

of their business or operations requires any consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority or any other person in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

4.8 Brokers. No broker or finder has acted directly or indirectly for Transferors in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements or understandings made by or on behalf of Transferors.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF TRANSFEEE

Transferee hereby represents and warrants to Transferors as follows:

5.1 Corporate Organization and Authority. Transferee is a public agency duly organized and validly existing under the laws of the State of West Virginia, authorized to determine, control, supervise and manage the financial, business and education policies and affairs of West Virginia University, and has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

5.2 No Default or Breach of Obligations. Neither the execution or delivery by Transferee of this Agreement and the documents to be executed and delivered by it pursuant hereto, nor the consummation of the transactions contemplated herein or therein, will conflict with, violate or result in the breach of or constitute a default under any law, regulation, order, writ, injunction, decree, determination or award of any court, governmental department, board,

Closing, to its officers, employees, agents, properties, operating manuals, books and records, and shall furnish Transferee all financial information, operating manuals and other data and information relating to the Loop Parcels as Transferee, through its officers, employees or agents, may reasonably request, including, but not limited to, environmental studies, title opinions, surveys and maps.

6.3 Consents; Additional Agreements. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, including (i) using reasonable efforts to remove any legal impediment to the consummation or effectiveness of such transactions, and (ii) using reasonable efforts to obtain all necessary waivers, consents and approvals of all third parties and governmental bodies, and to effect all necessary filings with all applicable state and federal governmental agencies or authorities.

ARTICLE VII

CONDITIONS TO OBLIGATIONS OF TRANSFEEEE

Each and every obligation of Transferee under this Agreement to be performed on or before the Closing shall be subject, unless waived by Transferee, to the satisfaction on or before the Closing Date of each of the following conditions:

7.1 Bankruptcy Court Approval of Transferee Purchase of SFR Lease and Dismissal of the Adversary Proceeding. The purchase of all right, title and interest of the Trustee in and to the SFR Lease by the Transferee from the Trustee in the SFR Bankruptcy Case pursuant to an order of the Bankruptcy Court, free and clear of all liens, claims and

7.5 Condition and Sufficiency of Assets. Since the execution of this Agreement, the Loop Parcels shall not have been adversely affected in any material way as the result of any act of God, fire, flood, war, labor disturbance or similar calamity, or by the actions of any lessee thereof or any other persons, and there shall not otherwise have been any material adverse change in the condition of the Loop Parcels since the date hereof.

7.6 Reconveyance of Old Easement. The City shall have reconveyed the Old Easement to Transferee in a form satisfactory to Transferee.

7.7 Representations and Warranties True. The representations and warranties contained in Article IV hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

7.8 Performance of Covenants. Transferors shall have performed and complied in all material respects with each and every covenant, agreement and condition required to be performed or complied with by it prior to or on the Closing Date.

7.9 No Governmental or Other Proceeding or Litigation. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated hereby, and no suit, action, investigation, inquiry or proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby or seeks to impose any liability on Transferee as a result of the transactions contemplated hereby.

7.10 Approvals and Consents. All consents and approvals of any private person, and all consents and approvals or the absence of disapprovals within applicable time periods, from public authorities, Federal, state, foreign or local (or exemptions from the

Adversary Proceeding and the release of the City, the Building Commission and their respective officers and employees from any and all liability with respect to the SFR Lease and the Adversary Proceeding. Notwithstanding the foregoing, it is the Transferors' position that the SFR Lease has been automatically rejected, but Transferors will cooperate with Transferee in connection with the entry of the order described in this sub-paragraph

8.2 Termination of the SFR Lease. Following Transferee's purchase of the SFR Lease, the Transferee and the Transferors shall enter into an agreement, in the form attached hereto as Exhibit C, immediately terminating the SFR Lease without liability to any party.

8.3 Dismissal of Certain Litigation Against City. The Trustee of the Bankruptcy Case of McCoy 6, LLC shall have caused civil action numbers 1:10CV54 and 1:10CV55 pending in the United States District Court for the Northern District of West Virginia, and adversary proceeding numbers 10-ap-00026 and 10-ap-00025 pending in the Bankruptcy Court, against the City and the City's officers and employees relating to Mountaineer Court to be dismissed as against the City and its officers and employees with prejudice, and the Trustee in the Bankruptcy Estates of McCoy 6, LLC, The Square at Falling Run, LLC and Augusta Apartments, LLC will release the City and its officers and employees from any and all claims with respect thereto.

8.4 Representations and Warranties True. The representations and warranties contained in Article V hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

8.5 Performance of Covenants. Transferee shall have performed and complied in all material respects with each and every covenant, agreement and condition

8.9 Certificates. Transferee shall have furnished Transferors with such certificates of its officers to evidence compliance with the conditions set forth in this Article VIII as may be reasonably requested by Transferors.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 Risk of Loss. Risk of loss of, or damage or destruction to, any of the Assets to be transferred to Transferee hereunder from fire or other casualty or cause, shall be borne by Transferors at all times prior to the Closing Date.

9.2 Entire Agreement. This Agreement, including the Schedules which form a part hereof, contains the entire understanding of the parties hereto in respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

9.3 Survival of Representations and Warranties. All representations, warranties, agreements, covenants and obligations made or undertaken by Transferee or Transferors in this Agreement (including the Schedules attached hereto), or in any certificate, instrument or document delivered by or on behalf of any of the parties pursuant to this Agreement, shall survive the Closing hereunder.

9.4 Amendment and Modification. This Agreement may be amended, modified and supplemented only by an instrument in writing signed by all of the parties hereto.

9.5 Assignment. This Agreement and all the provisions hereof shall be binding upon and inure to the benefits of the parties and their respective successors and

Morgantown Building Commission
c/o City Manager
389 Spruce Street
Morgantown, West Virginia 26505

or to such other address as a party shall hereafter specify by notice in writing to the other.

9.7 Non-waiver. No waiver or omission by either party to require performance by the other party of any of the terms and conditions of this Agreement, and no forbearance or indulgence granted or shown by either party, shall be effective unless contained in a written instrument signed by the waiving party, nor shall it release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all provisions or obligations of this Agreement on the latter's part to be performed unless it is so stated in said writing.

9.8 Expenses. Regardless of whether the Closing occurs, each party shall bear its own expenses in connection with this Agreement and the transactions herein contemplated, except to the extent resulting from a misrepresentation by either party or the breach by either party in performing their respective obligations herein, and except as otherwise expressly provided herein.

9.9 No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person other than the undersigned parties any rights or remedies under or by reason of this Agreement.

9.10 Further Assurances.

(a) Transferors hereby agrees, upon the request of Transferee and without additional consideration, to take any and all steps reasonably necessary to place Transferee in possession and operating control of the Assets, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further

9.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

9.14 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of West Virginia (without reference to any conflicts of laws principles thereof).

[Signature Page Follows]

SCHEDULE 1.1

LIST OF PROPERTIES TO BE PURCHASED FROM THE CITY OF MORGANTOWN OR CITY OF MORGANTOWN BUILDING COMMISSION

<u>Map No.</u>	<u>Parcel No.</u>	<u>Description</u>	<u>Title to Property in Name of:</u>	<u>Total Taxes Due</u>
20	394	BL A, N PT Lot 5,6 Univ Pl #1	City of Morgantown Bldg. Comm.	Tax Exempt
20	395	BL A, N PT LOT 4 UNIV PL #1	City of Morgantown Bldg. Comm.	Tax Exempt
20	396	BL A PT LOT 3 276 STEWART	City of Morgantown Bldg. Comm.	Tax Exempt
20	397	BL A PT LOTS 1,2 270 STEW	City of Morgantown Bldg. Comm.	Tax Exempt
20	400	.23 AC BEAUTY TERRACE ADD	City of Morgantown Bldg. Comm.	Tax Exempt
		STEWART & UNIV		
20	402.2	1 AC BETWEEN UNIV AVE &	City of Morgantown Bldg. Comm.	Tax Exempt
		CAMPUS DRIVE		
20	403	BL B LOT 4 1900 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	404	BL B PT LOT 3 1906 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	404.1	BL B PT LOT 3 285 FALLING R	City of Morgantown Bldg. Comm.	Tax Exempt
20	405	BL B LOT 2 1908 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	406	BL B, LOT 1 1912 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	407	BL A, PT LOTS 2 THRU 8	City of Morgantown Bldg. Comm.	Tax Exempt
20	408	BL A, PT LOT 7 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	409	BL A, N PT LOT 8 42 YOKE ST	City of Morgantown Bldg. Comm.	Tax Exempt
20	410	BL A PT LOT 9 & PARCEL	City of Morgantown Bldg. Comm.	Tax Exempt
		46 YOKE STREET		
20	411	BL C, LOT 1 UNIVERSITY PL	City of Morgantown Bldg. Comm.	Tax Exempt
20	412	BL C LOTS 2,3 & STRIP	City of Morgantown Bldg. Comm.	Tax Exempt
		295 FALLING RUN ROAD		
20	413	BL C LOTS 4,5 & STRIP	City of Morgantown Bldg. Comm.	Tax Exempt
		291 FALLING RUN ROAD		
20	414	BL A PT LOT 9,10 54 YOKE ST	City of Morgantown Bldg. Comm.	Tax Exempt
20	416	BL A LOT 11 60 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	417	BL A LOT 12 64 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	419	BL A LOT 13 68 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	520	BL B, LOT PT 7, ALL 6	City of Morgantown Bldg. Comm.	Tax Exempt
20	521	BL B, LOT 5 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	524	BL B, LOT 2 298 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	525	BL B, LOT 1 294 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	526	BL B, LOT 9 290 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	527	BL B, PT LOT 7 286 FALLING	City of Morgantown Bldg. Comm.	Tax Exempt
20	528	BL B, LOT 8, PT 7	City of Morgantown Bldg. Comm.	Tax Exempt
		282 FALLING RUN		
20	529	BL B, PT LOT 10	City of Morgantown Bldg. Comm.	Tax Exempt
		278 FALLING RUN		
20	530	BL B, PT LOT 10 1890 UNIV A	City of Morgantown Bldg. Comm.	Tax Exempt
20	531	BL B, LOT 11 1880 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	540	BL A, LOT 3 723 COLLEGE AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	543	BL A, LOT 6, PT 18	City of Morgantown Bldg. Comm.	Tax Exempt
		729 COLLEGE AVE		

EXHIBIT A LEGEND

“Loop Area” – those areas depicted as hatched in blue upon the Official Tax Maps attached hereto as follows:

- A. Morgantown Corporation, District 1, Map No. 20; and**
- B. Morgantown Corporation, District 1, Map No. 26.**

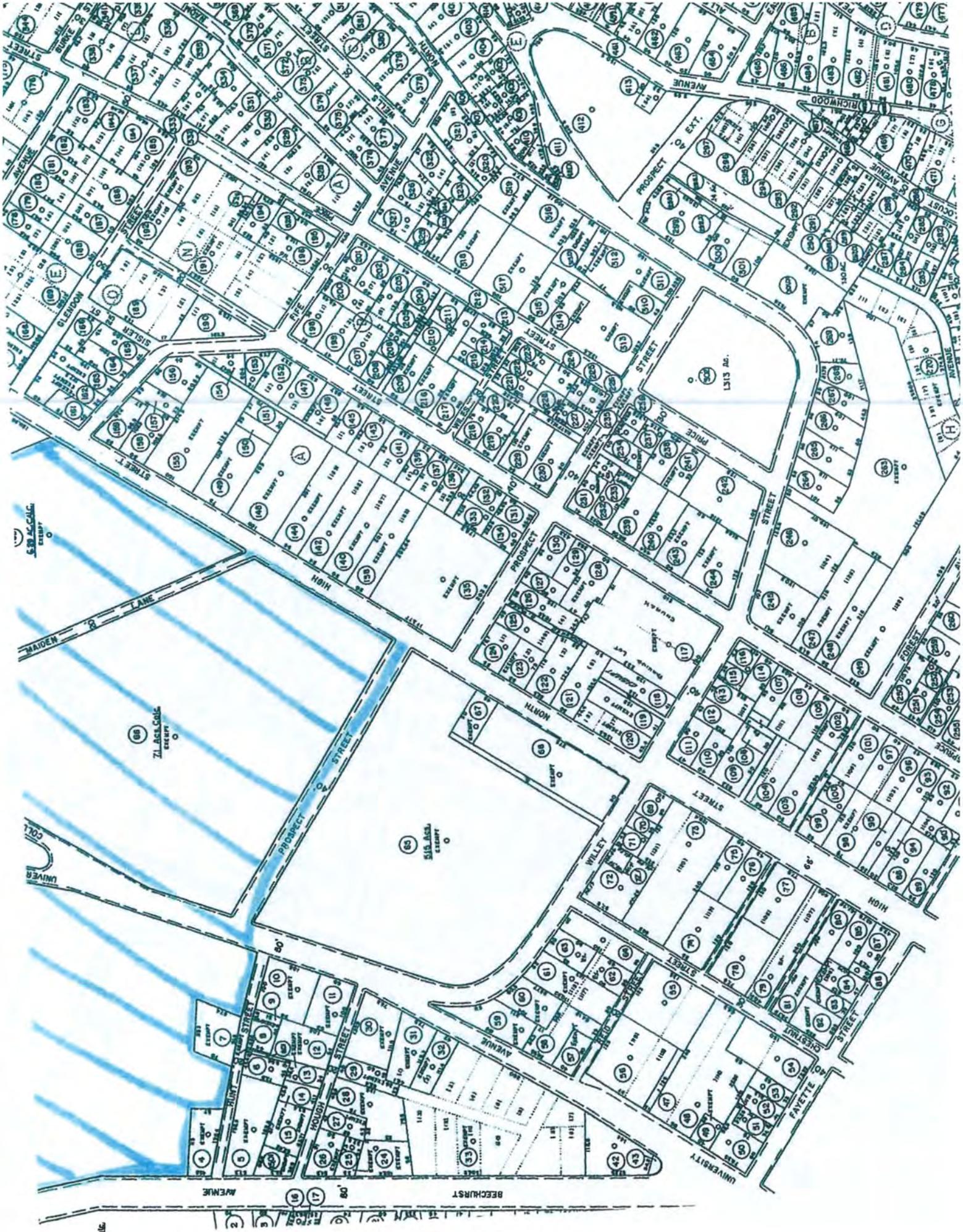
“Falling Run Road Area” – those areas depicted as hatched in red upon those certain Official Tax Maps attached hereto, as follows:

- A. Morgantown Corporation, District 1, Map No. 20;**
- B. Morgantown Corporation, District 1, Map No. 21; and**
- C. Morgan District, District 12, Map No. 8B.**

“College Park Area” – the area depicted and outlined in black upon the plat of survey for West Virginia University Board of Governors dated April 28, 2010, prepared by Alpha Associates, Incorporated attached hereto.

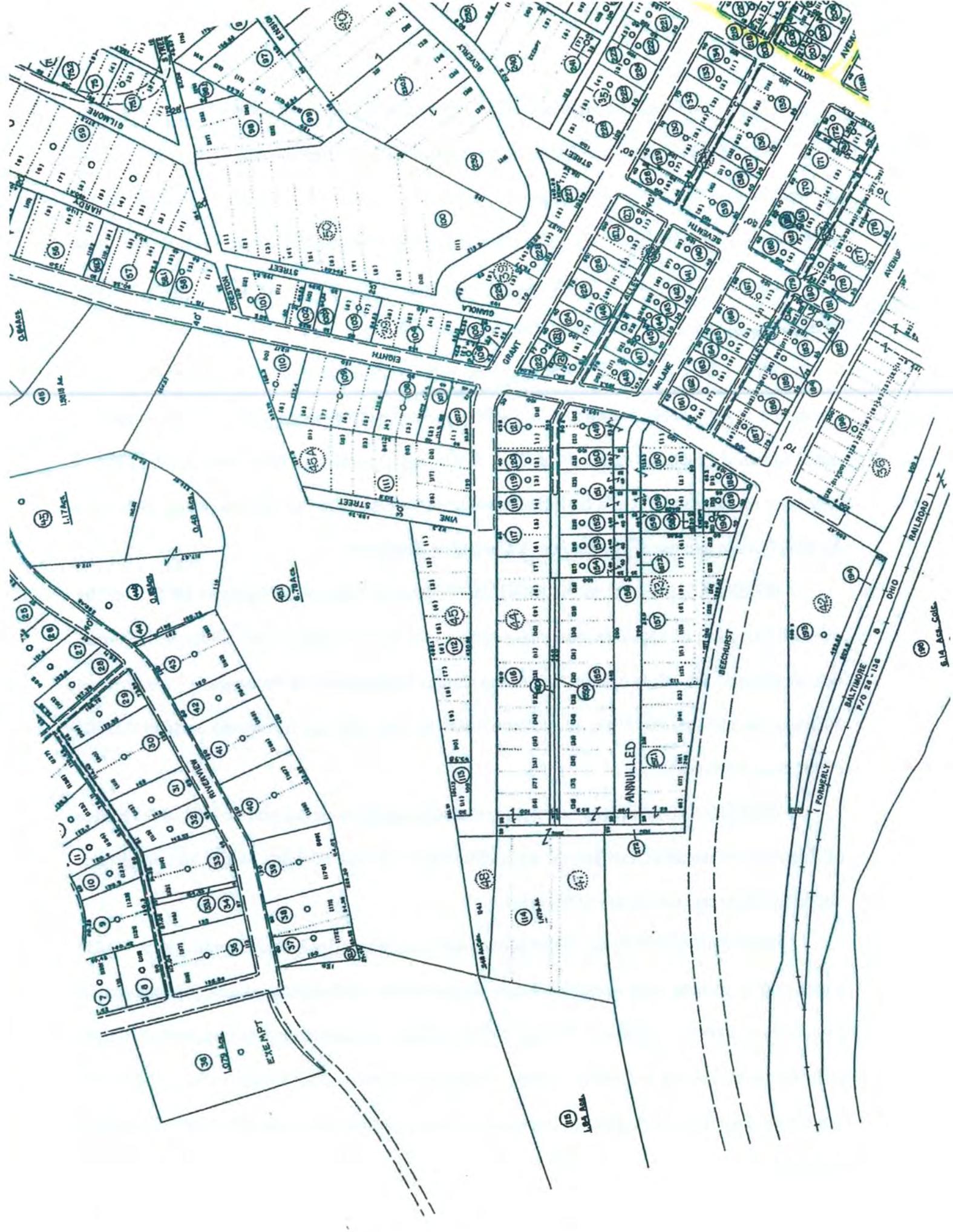
“Sunnyside Area” – those areas depicted upon the Official Zoning Map to the City of Morgantown as Central Sunnyside Overlay and South Sunnyside Overlay, all as more particularly depicted as hatched in yellow upon those certain Official Tax Maps attached hereto, as follows:

- A. Morgantown Corporation, District 1, Map No. 20;**
- B. Morgantown Corporation, District 1, Map No. 19;**
- C. Morgantown Corporation, District 1, Map No. 14; and**
- D. Morgantown Corporation, District 1, Map No. 15.**





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GILMORE
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CROSSEDON
EIGHTH
GRANT
GRAND
MCLANE
SEVENTH
SOUTH AVENUE

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RAILROAD
FORMERLY BALTIMORE P.O. 28-738 OHIO
S. 14. Area. Colls.

partners, members, representatives, attorneys, and all other persons, firms, partnerships or corporations affiliated or allied-in-interest with said entities, agree as follows:

1. The MOU is hereby cancelled and terminated as of the Effective Date hereof and is no longer in force and effect;

2. The Notice of Exercise is hereby rescinded, cancelled and terminated as of the Effective Date hereof and is no longer in force and effect.

3. City, WVU and Commission are hereby released from any and all rights, duties and obligations under the MOU and the Notice of Exercise.

4. This Agreement shall be covered and construed and enforced in accordance with laws of the State of West Virginia.

5. This Agreement and the rights and obligations hereunder shall be binding upon and insure to the benefit of the parties hereto, their respective heirs, administrators, successors, assigns, predecessors in ownership or interest, successors in ownership or interest, transferees and assigns, and all of their collective past, present and future parents, subsidiaries, divisions affiliates, owners, employees, presidents, chief executive officers, principals, directors, officers, shareholders, servants, agents, partners, members, representatives, attorneys, and all other persons, firms, partnerships or corporations affiliated or allied-in-interest with said entities.

6. The parties acknowledge that they have read this Agreement after discussing it with their attorneys and that they have reviewed all terms and conditions herein and they understand the meaning and affect thereof and have willingly entered into and executed this Agreement.

7. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter of this Agreement. No oral

COMMISSION:

The City of Morgantown Building
Commission, a West Virginia public
corporation

Date: _____

By: _____

Name: _____

Its: _____

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2012, by _____, the duly authorized _____,
of The City of Morgantown, a municipal corporation, for and on behalf of said municipal
corporation.

My commission expires _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2012, by _____, the _____ of West
Virginia University, acting on behalf of the West Virginia University Board of Governors, a
body politic of the State of West Virginia, on behalf of said body politic.

My commission expires _____.

[NOTARIAL SEAL]

Notary Public

EXHIBIT C

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT (this "Agreement") dated this ____ day of _____, 2012 by and among THE CITY OF MORGANTOWN BUILDING COMMISSION, a West Virginia public corporation ("Lessor"), THE CITY OF MORGANTOWN, a municipal corporation and third party beneficiary ("City"), and THE BOARD OF GOVERNORS OF WEST VIRGINIA UNIVERSITY FOR AND ON BEHALF OF WEST VIRGINIA UNIVERSITY ("Lessee").

RECITALS:

WHEREAS, Lessor, City and The Square at Falling Run, LLC ("SFR") entered into that certain Ground Lease dated April 17, 2008, a Memorandum of which has been recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1365, at page 161, as amended by that certain Amendment of Lease dated August 19, 2008, of record in the aforesaid Clerk's Office in Deed Book 1375, at page 438 (collectively, the "Lease"), pursuant to which Lessor leased to SFR certain parcels of real estate located in the Fourth and Fifth Wards of the City of Morgantown, West Virginia; and

WHEREAS, SFR is now a debtor in a Chapter 7 bankruptcy proceeding pending in the United States Bankruptcy Court for the Southern District of West Virginia (Case No. 1:11-bk-00753) ("Bankruptcy Court"); and

WHEREAS, pursuant to an order of the Bankruptcy Court entered on _____, the Bankruptcy Trustee of the SFR bankruptcy estate, sold, assigned and transferred the Lease to Lessee; and

WHEREAS, Lessor, City and Lessee now desire to terminate the Lease.

THE CITY OF MORGANTOWN, a municipal corporation

By: _____

Name: _____

Its: _____

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY, an agency of the State of West Virginia

By: _____

Name: _____

Its: _____

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA, To-Wit:

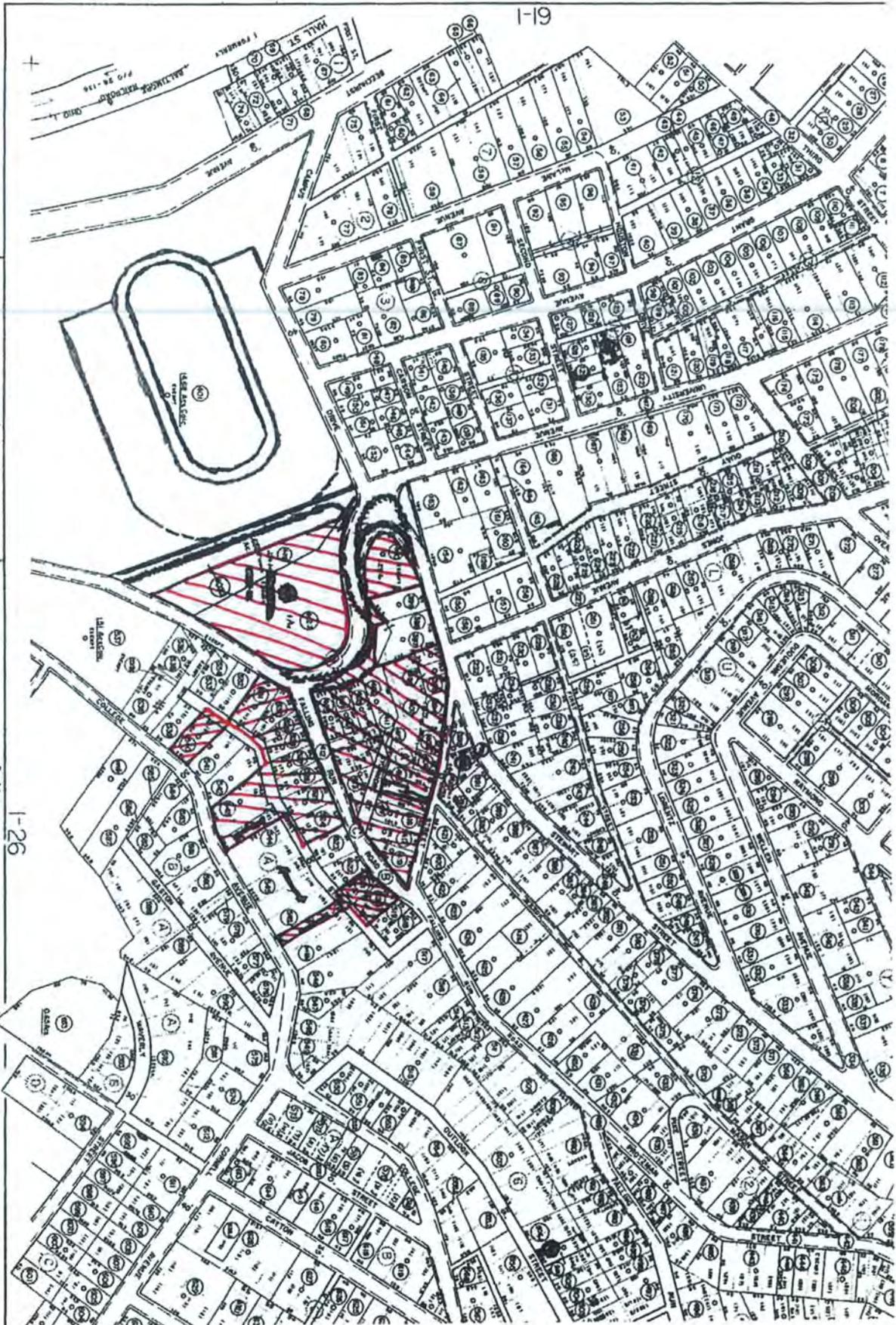
The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the duly authorized _____, of The City of Morgantown Building Commission, a West Virginia public corporation, for and on behalf of said corporation.

My commission expires _____.

[NOTARIAL SEAL]

Notary Public

EXHIBIT D



For Tax Purposes Only

Legend	
Original Plat	1-19
Revised Plat	1-26

Revisions		
1	6-11-26	AM
2	7-17-26	AM
3	11-18-26	AM

COUNTY of MONONGALIA