AN ORDINANCE AUTHORIZING A LICENSE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LICENSOR, AND MONONGALIA COUNTY DEVELOPMENT AUTHORITY, LICENSEE, AS THE SAME APPLIES TO A PORTION OF THE REALTY BEING UTILIZED FOR THE CONSTRUCTION OF ROAD KNOWN AS THE MORGANTOWN MUNICIPAL AIRPORT ACCESS ROAD.

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

This Ordinance shall be effective upon date of adoption.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

ROAD LICENSE AGREEMENT

THIS ROAD LICENSE AGREEMENT (the "Agreement") is made this _____ day of _____, 2011, by and between the CITY OF MORGANTOWN, Morgantown, West Virginia, a Municipal Corporation (the "City")

AND

MONONGALIA COUNTY DEVELOPMENT AUTHORITY, a West Virginia Public Corporation, (the "MCDA").

WHEREAS, the City is the fee title owner of parcels of land located in the City of Morgantown, County of Monongalia, West Virginia, which are more particularly described at the following Deed Book references in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, collectively (the "Property"):

DATE	GRANTOR	DEED BOOK/ PAGE
October 11, 1935	**Ruth Fleming Hare and Lloyd H. Huse**	**273/266**
February 9, 1938	**Thomas E. Powell and Mary C. Powell**	**290/293**
August 8, 1939	**Bethlehem Steel Corporation**	**302/46**
June 18, 1945	**John Evanto, et al**	**365/92**

WHEREAS, MCDA desires to acquire License over, on, under and through City's Property as set forth in the preliminary plat attached as Exhibit "A" and incorporated herein by reference and as more particularly described by the metes and bounds description attached as Exhibit "B" also incorporated herein by reference, "License Area" for the, use, construction, reconstruction, operation, maintenance, repair, renewal and removal of a public road to be known as the Morgantown Municipal Airport Access Road (" Access Road").

WHEREAS, the MCDA will construct the Access Road and desires the Access Road to become a public road;

WHEREAS, the City will inspect the work performed by the MCDA in accordance with its normal procedure to assure that the Access Road is constructed in a manner that will allow it to be accepted as a public road.

WITNESSETH, That the City, for and in consideration of the sum of ONE DOLLAR ($1.00) lawful money of the United States, paid by the MCDA, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the MCDA, its successors and assigns, the free and uninterrupted use, liberty and privilege of a License over, on, under and through the License Area for so long as the License Area is utilized for a public road, to lay, construct, reconstruct, maintain, repair, replace and operate the Access Road on the City's Property subject to the covenants contained in this Road License Agreement.

The City and the MCDA covenant and agree as follows:

1. That the above recitals and the attached Exhibits are incorporated as an integral part of the License Agreement as if fully set forth herein;

2. That the City warrants that it is the fee simple owner of title to the Property and the interest conveyed by this Agreement. The City agrees to cooperate with the MCDA so that the Access Road can be recognized as a public road in all respects.

3. That the location of the License Area is shown on the plat of the Access Road Right-of-Way prepared by Alpha Associates Incorporated and attached as Exhibit "A" and more fully described in the attached Exhibit "B".

4. That the MCDA covenants and agrees that all work performed with reference to the construction of the Access Road will be done in conformity with the standards established by the City of Morgantown and the State of West Virginia. The MCDA further covenants and agrees that after completion of construction of the Access Road, the City shall be provided with duly certified copies of "as built" plans, showing the exact location of the Access Road.

5. That the MCDA is granted the right of passage over City's Property, over existing public roadways, in and through the License Area, all for purposes consistent with treating the Access Road as a public road and exercising the rights granted by this Road License Agreement. Any damage to the License Area not authorized by this License Agreement occurring in the course of exercising the rights granted by this Road License Agreement shall be repaired at the cost and expense of MCDA to the condition which existed immediately prior to such damage.

6. That the License granted is for the construction and use of the Access Road within the City of Morgantown to be owned, operated and maintained by the MCDA as a public road.

7. That except as set forth in Section 13 hereof, the City agrees not to construct any building or structures over or create any hazard or obstruction to or interfere with MCDA's use of the License Area. MCDA is granted the right to remove any trees, shrubberies, roots, fences or other obstructions that may interfere or threaten to interfere with the roadway construction, by appropriate methods and to perform such excavation and earth removal or placement as may be necessary for the construction of the Access Road. Provided, however, that before taking such action MCDA shall notify City of the action to be taken and the MCDA shall take no action that will interfere in anyway with the operation of the Airport. It shall be conclusively presumed that

the MCDA has properly notified the City for construction of the Access Road upon providing the City a complete set of plans and specifications and includes the City in the MCDA's "Notice to Proceed" to the contractor for construction of the Access Road. The City may send a representative to the regularly scheduled construction meetings for the project and participation by a City representative in the regularly scheduled construction meetings for the project shall be deemed on going notice to the City regarding construction of the Access Road.

8. That the MCDA shall, maintain, repair, service, construct and reconstruct the Access Road until the first to occur of this License Agreement terminating or for so long as the Access Road is maintained as a public road, so as to keep same in good operating condition, and in so doing, use reasonable care not to unduly disturb the balance of the City's Property outside the License Area or the City's use and enjoyment thereof.

9. That the MCDA shall pay the costs of recording this License Agreement and with obtaining all permits in connection with this License Agreement and construction of the Access Road, and pay any tax that may be assessed or imposed as a result of this License.

10. That this License and the rights granted hereunder shall terminate at the earliest to occur of the Property, subject to the License, no longer being utilized for a public road or upon completion of construction and acceptance of the Access Road by the City. The MCDA and the City agree to execute any and all documents necessary to convey title to the Access Road to the City and terminate this License Agreement.

11. That this License may be terminated in writing by the City at any time that the FAA determines that the License Area will be required for aeronautical purposes. Upon License termination the License Area and all rights, duties and obligations therein will revert to the City.

12. That the MCDA by accepting this License agrees for itself, its successors and assigns that it will not make use of the License Area in any manner which might interfere with the landing and taking off of aircraft from Morgantown Municipal Airport. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the License Area and cause the abatement of the interference at the expense of the MCDA.

13. That the City reserves, for the use and benefit of the public, an easement for the free passage of aircraft, defined as any contrivance now known or hereafter developed for flight, by whomever owned or operated, over the License Area. The City reserves the right, after providing written notice to the MCDA and an opportunity to cure, and the MCDA's failure to cure within thirty(30) days of such notice (or shorter period in the event of an emergency situation) to enter upon the License Area and remove any structure or object and cut any tree, all of which shall be at the expense of the MCDA, in the event such structure or tree interferes with the flight path of aircraft from the Morgantown Municipal Airport.

14. That this License shall be subordinate to the provisions of and requirements of any existing or future agreement between the City and the United States, relating to the development, operation, or maintenance of the Morgantown Municipal Airport.

15. That the MCDA agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure as planned for the License Area, or in the event of any planned modification or alteration of any future structure situated on the License Area.

16. That this License shall be subject to all other terms and conditions of the City's grant assurances to the Federal Aviation Administration (the "FAA") pursuant to all Grant Agreements entered into by and between the FAA and the City. The City shall provide the MCDA with written notification of all FAA grant assurances and requirements.

17. This License is entered into by the City pursuant to authorization duly given by the City on _____, 2011at by Ordinance No. ____.

TO HAVE AND TO HOLD all the privileges by the MCDA, its successors and assigns, to and for the use of the MCDA, its successors and assigns forever.

IN WITNESS WHEREOF, the City has caused this License Agreement to be executed on the day and year above set forth.

CITY:

WITNESS/ATTEST:

CITY OF MORGANTOWN

_____

By:_____
Print Name &Title:_____

MCDA:

WITNESS/ATTEST:

MONONGALIA COUNTY DEVELOPMENT

_____

By:_____
Print Name & Title:_____

ACKNOWLEDGMENT

STATE OF WEST VIRGINIA)
) ss:
COUNTY OF MONONGALIA)

On this day of_____, 2011, before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____who is the _____of The City of Morgantown, and acknowledged that as such Officer of The City of Morgantown he is authorized to execute the **Road License Agreement** as the act and deed of City of Morgantown.

WITNESS my hand and seal the day and year aforesaid.

_____
Notary Public

My Commission expires:

STATE OF WEST VIRGINIA)
) ss:
COUNTY OF MONONGALIA)

On this day of_____, 2011, before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____who is the _____of The MCDA, and acknowledged that as such Officer of The MCDA he is authorized to execute the **Road License Agreement** as the act and deed of The MCDA.

WITNESS my hand and seal the day and year aforesaid.

_____
Notary Public

My Commission expires:

EXHIBIT "A"
ENGINEER'S DRAWING OF LICENSE AREA

Exhibit A

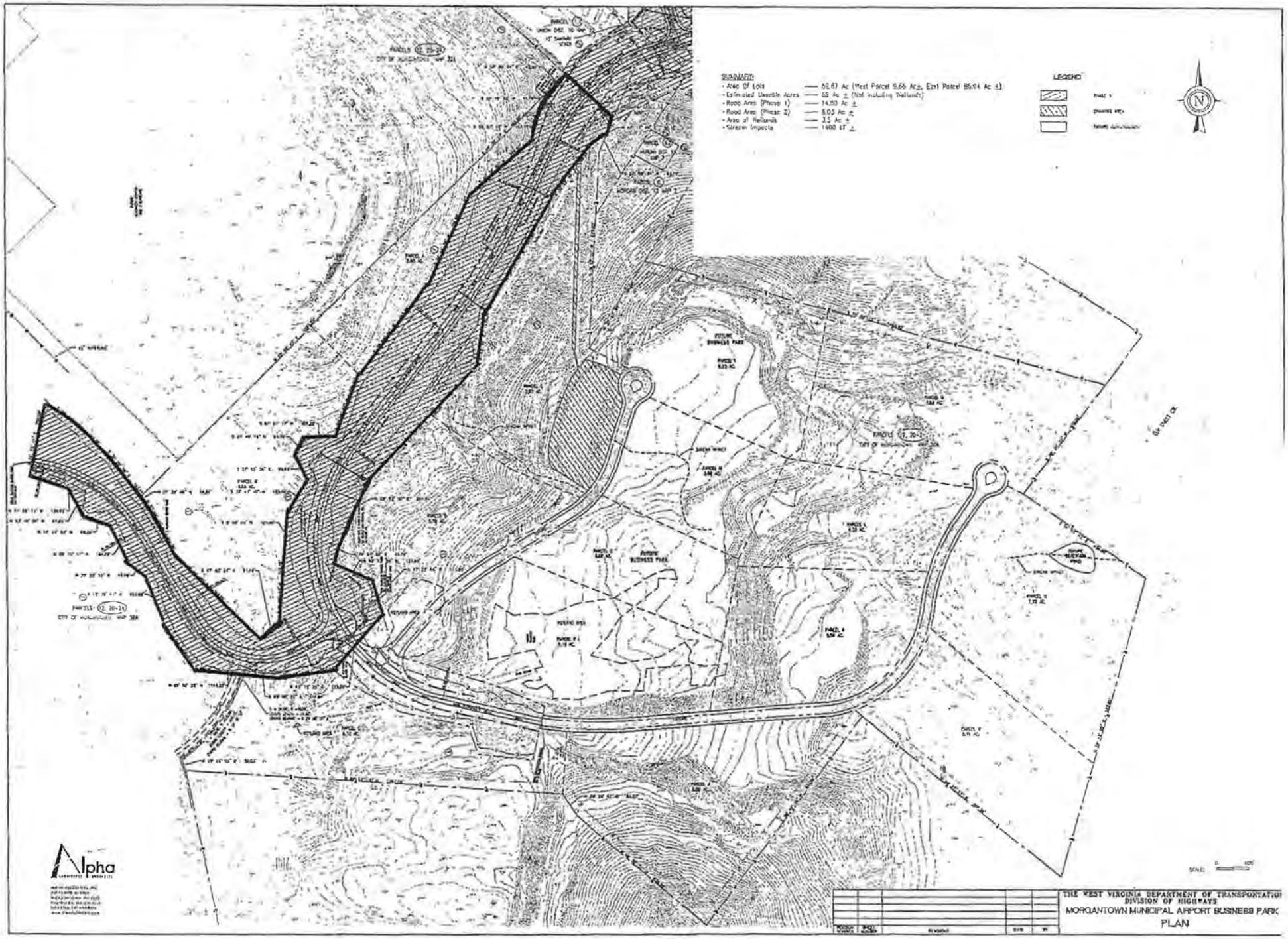
SUMMARY:
- Area Of Lots — 82.67 Ac (West Parcel 9.66 Ac ±, East Parcel 86.04 Ac ±)
- Estimated Useable Acres — 65 Ac ± (Not Including Wetlands)
- Road Area (Phase 1) — 14.50 Ac ±
- Road Area (Phase 2) — 6.03 Ac ±
- Area of Wetlands — 3.5 Ac ±
- Stream Impacts — 1400 LF ±
LEGEND
N
Alpha
THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
MORGANTOWN MUNICIPAL AIRPORT BUSINESS PARK
PLAN

EXHIBIT "B"
LEGAL DESCRIPTION

EXHIBIT B

TRACT 1.1 – City of Morgantown

All that certain tract or parcel of real estate, situate, lying and being on the waters of West Run in the City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows:

BEGINNING at a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) along the western right of way line of proposed Morgantown Municipal Airport Access Road, Monongalia County, West Virginia, said point being proposed right of way line 69 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 101 feet radially left of centerline at Station 15+58

thence, westerly, continuing with said proposed right of way line 170 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 249 feet radially left of centerline at Station 16+19.36

thence, westerly, continuing with said proposed right of way line 261 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 465 feet radially left of centerline at Station 17+05.70

thence, northwesterly, continuing with said proposed right of way line 188 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 518 feet radially left of centerline at Station 17+97.08

thence, northerly, continuing with said proposed right of way line 153 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 544 feet radially left of centerline at Station 18+70.30

thence, northwesterly, continuing with said proposed right of way line 75 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 602.47 feet radially left of centerline at Station 18+92.04

thence, northerly, continuing with said proposed right of way line 124 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 649 feet radially left of centerline at Station 19+43.26

thence, westerly, continuing with said proposed right of way line 92 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 739 feet radially left of centerline at Station 19+51.73

thence, northwesterly, continuing with said proposed right of way line 98 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 787 feet radially left of centerline at Station 19+85.55

thence, westerly, continuing with said proposed right of way line 137 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 921.49 feet radially left of centerline at Station 19+95.05

thence, northerly, continuing with said proposed right of way line 250 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 929.08 feet radially left of centerline at Station 20+82.82

thence, southeasterly, continuing with said proposed right of way line 266 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 687 feet radially left of centerline at Station 20+40.12

thence, southeasterly, continuing with said proposed right of way line 182 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 551 feet radially left of centerline at Station 19+85.70

thence, southeasterly, continuing with said proposed right of way line 209 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 445 feet radially left of centerline at Station 18+95.09

thence, southeasterly, continuing with said proposed right of way line 370 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 243 feet radially left of centerline at Station 17+09.37

thence, northeasterly, continuing with said proposed right of way line 81 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 166.24 feet radially left of centerline at Station 17+28.16

thence, northerly, continuing with said proposed right of way line 225 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 110 feet radially left of centerline at Station 19+00

thence, northerly, continuing with said proposed right of way line 121 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 105 feet radially left of centerline at Station 20+00

thence, northeasterly, continuing with said proposed right of way line 123 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 65 feet radially left of centerline at Station 21+00

thence, northwesterly, continuing with said proposed right of way line 96 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 140 feet radially left of centerline at Station 21+50

thence, northeasterly, continuing with said proposed right of way line 65 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 145 feet radially left of centerline at Station 22+00

thence, easterly, continuing with said proposed right of way line 107 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 60 feet radially left of centerline at Station 22+54.39

thence, northerly, continuing with said proposed right of way line 205 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 120 feet left of and at a right angle to centerline at Station 24+50

thence, northeasterly, continuing with said proposed right of way line 346 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 120 feet radially left of centerline at Station 28+00

thence, northeasterly, continuing with said proposed right of way line 330 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 160 feet radially left of centerline at Station 31+50

thence, northeasterly, continuing with said proposed right of way line 264 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 60 feet left of and at a right angle to centerline at Station 34+00

thence, northerly, continuing with said proposed right of way line 113 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 85 feet radially left of centerline at Station 35+00

thence, northeasterly, continuing with said proposed right of way line 74 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 89.60 feet radially left of centerline at Station 35+64.02,

thence, northeasterly, continuing with said proposed right of way line 45 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 88.33 feet radially left of centerline at Station 36+05.58 said rod stands as corner to Guy A. and Loretta K. Walls and proposed Morgantown Municipal Airport Access Road Tract 2.1;

thence, southeasterly, with said proposed Morgantown Municipal Airport Access Road Tract 2.1 for 207 feet, more or less, to a point 119.21 feet radially right of centerline at Station 36+12.06;

thence, southerly, continuing with said proposed Morgantown Municipal Airport Access Road Tract 2.1 for 37 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 131.82 feet radially right of centerline at Station 35+67.61, said rod stands along the eastern right of way line of proposed Morgantown Municipal Airport Access Road;

thence, southwesterly, with said proposed right of way line 94 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 110 feet radially right of centerline at Station 34+50

thence, southwesterly, continuing with said proposed right of way line 198 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 75 feet right of and at a right angle to centerline at Station 32+50

thence, southwesterly, continuing with said proposed right of way line 412 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 70 feet radially right of centerline at Station 28+50

thence, southerly, continuing with said proposed right of way line 175 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 150 feet right of and at a right angle to centerline at Station 27+00

thence, southwesterly, continuing with said proposed right of way line 490 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 105 feet radially right of centerline at Station 22+00

thence, southwesterly, continuing with said proposed right of way line 205 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 75 feet radially right of centerline at Station 19+50

thence, southerly, continuing with said proposed right of way line 93 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 45 feet radially right of centerline at Station 18+50

thence, southeasterly, continuing with said proposed right of way line 132 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 150 feet radially right of centerline at Station 17+50

thence, southerly, continuing with said proposed right of way line 112 feet, more or less, to a 5/8-inch iron rod w/ 2-inch diameter aluminum cap (set) 128.66 feet radially right of centerline at Station 15+97.09

thence, southwesterly, continuing with said proposed right of way line 232, more or less, to the place of beginning and containing 14.60 acres (635,976 square feet), more or less, as surveyed in December, 2010, by Alpha Associates, Inc., of Morgantown, WV, and as shown on a plat of survey for Monongalia County Development Authority dated December 24, 2010, identified as Tract 1.1, recorded in map cabinet _____ and made a part of this description.

The tract or parcel of land hereinabove described is a portion of that same real estate conveyed unto The City of Morgantown, a municipal corporation, by four deeds; the first, dated October 11, 1935, from Ruth Fleming Huse and Lloyd H. Huse, her husband, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in deed book 273, at page 266; the second, dated February 9, 1938, from Thomas E. Powell and Mary C. Powell, his wife, and of record in the said Clerk's Office in Deed Book 290, at Page 293; the third, dated August 8, 1939, from Bethlehem Steel Corporation, a corporation organized and existing under the laws of the State of Delaware, and of record in the said Clerk's Office in Deed Book 302, at Page 46; and the fourth, dated June 18, 1945, from John Evanto, et al., under special term of the Circuit Court of Monongalia County, and of record in the said Clerk's Office in Deed Book 365, at Page 92.

Said tract or parcel of real estate is more specifically shown on tax map sheet 32A as part of parcels 12, 13, 20 and 21 in the City of Morgantown.

DRAFT

Alpha Associates, Incorporated

Steven V. Buchanan, PS #1009

Sabraton Stormwater Project

And

Whispering Woods Water Project

Bond Ordinances

In an effort to reduce the amount of resources used, the Bond Ordinances will be made available upon request due to their large size.

Both Bond Ordinances have been published in the November 29th Committee of the Whole Packet as well as the December 6th Regular Meeting Packet.

Additionally, paper copies may be viewed in the City Clerk's Office or sent via email upon request by contacting: (304) 284-7439

AN ORDINANCE REPEALING ARTICLE 721 OF THE CITY OF MORGANTOWN'S BUSINESS AND TAXATION CODE AND REPLACING IT WITH A NEW ARTICLE 721, WHICH PROHIBITS OIL AND GAS DRILLING OPERATIONS WHICH INVOLVE HORIZONTAL DRILLING AND/OR FRACTURING OR FRACKING WITHIN THE CITY, AND THE OPERATION OF WELLS THAT UTILIZE HORIZONTAL DRILLING AND/OR FRACTURING OR FRACKING WITHIN ONE MILE OF THE MORGANTOWN CITY LIMITS.

The City of Morgantown hereby ordains that Article 721 of its Business and Taxation Code is repealed in its entirety and replaced with a new Article 721 which reads as follows:

721.01 DECLARATION AND FINDINGS

(a) It is hereby found and determined that the horizontal drilling for oil and gas and/or using fracturing or fracking methods in oil and gas drilling operations are activities which adversely impact the environment, interfere with the rights of citizens in the enjoyment of their property, and have the potential for adversely affecting the health, well being and safety of persons living and working in and around areas where such horizontal drilling and/or fracturing or fracking drilling operations exist. Accordingly, it is found that horizontal drilling of oil and gas wells and/or fracturing or fracking in oil and gas well operations if performed within this municipality or within one mile of the City of Morgantown constitutes a public nuisance. It is also found and determined that the processes known as horizontal drilling and/or fracturing or fracking have an increased level of potential harm which includes, but may not be limited to, contamination of ground water and hazards associated with the storage, treatment and transportation of the water or other liquids after being used in the process of horizontal drilling and/or fracturing or fracking. These potential hazards associated with horizontal drilling and/or fracturing or fracking may impact the citizens, drinking water, and property within the City of Morgantown, even though the horizontal drilling and/or fracturing or fracking activity may take place outside the corporate limits of the City.

(b) By authority set forth in Sections 8-12-5(13), 8-12-5(23) and 8-12-5 (44), of the West Virginia Code, the City of Morgantown has plenary power to: (1) prevent injury or annoyance to the public from anything dangerous, offensive or unwholesome, (2) provide for the hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance, and (3) protect and promote the public morals, safety, health, welfare and good order of the citizens of this municipality, and it is exercising such power in the enactment of and enforcement of this Article. Furthermore, in enacting this Article, the City of Morgantown is exercising powers and authority granted to it by Section 8-12-19 of the West Virginia Code inasmuch as the power granted in Chapter 8 of the West Virginia Code to control the health and safety issues addressed in subsection (a) above cannot be reasonably and efficiently exercised by confirming the exercises thereof within the corporate limits of this municipality, and, for that reason the provisions of this Article shall extend beyond the City of Morgantown corporate limits.

721.02 DEFINITIONS

For the purpose of this Article, the following words shall have the meanings set forth as follows:

(a) "Drilling" means the sinking, drilling, boring or digging of a shaft or hole in the earth for any purpose in conjunction with the production of oil or gas.

(b) "Fracturing" or "Fracking" means any method used to increase the inherent productivity of an oil or gas well by injecting, shooting or pumping water, chemicals, or any other liquid into a well.

(c) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil herein.

(d) "Horizontal Drilling" means the drilling of an oil or natural gas well at an angle to the vertical, so the well runs parallel to the formation containing the oil or gas.

(e) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoirs.

(f) "Person" means any natural person, corporation, firm, partnership, association or corporation that owns, manages, operates, controls, or possesses a well as principal or as lessee or contractor, employee or agent of such principal.

(g) "Well" means any shaft or hole drilled, sunk, bored or dug into the earth or into underground strata for the extraction or injection or placement of any oil, liquid or gas; or any shaft or hole sunk or used in conjunction with such extraction or injection using fracturing or fracking methods. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of testing for or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

721.03 DRILLING PROHIBITED; PENALTIES AND ENFORCEMENT.

(a) Drilling a well for the purpose of extracting or storing oil or gas using horizontal drilling and/or fracturing or fracking methods within the limits of the City of Morgantown or within one mile of the corporate limits of the City of Morgantown is prohibited. For purposes of calculating the one mile distance, it shall be measured from the well head.

(b) Any person who violates this section shall be fined up to the sum of five hundred dollars ($500.00). Each day that such person continues to violate this section after being advised by the City Manager or any law enforcement officer of the City of Morgantown that the law has been violated shall be considered a new offense.

(c) The City Manager shall have the authority to direct the City Attorney or such other legal

counsel as may be employed, to institute a civil action seeking an injunction to prevent the violation of this ordinance.

721.04 PERMIT REQUIRED FOR DRILLING WELLS NOT INVOLVING HORIZONTAL DRILLING AND/OR FRACTURING OR FRACKING.

Wells which do not involve drilling operations that utilize horizontal drilling and/or fracturing or fracking shall be allowed within the City of Morgantown; however, no person shall commence to drill any such well for water, oil, gas, or natural or artificial brine or carry on any such development within the City, except pursuant to a permit issued by the Director of Finance, after approval by the City Manager.

721.05 PERMIT APPLICATION; FEE.

Any person desiring to engage in the drilling of a well for water, oil, gas or natural or artificial brine allowed under Section 721.04 of this Article or to carry on the operation of a water, oil, gas or natural or artificial brine well within the City, as allowed by Section 721.04 shall make application to the City Manager upon such forms as may be prescribed. Such application for the drilling of a well for water shall be accompanied by a fee of ten dollars ($10.00), and for the drilling of a well for oil, gas or natural or artificial brine, a fee of one hundred dollars ($100.00).

721.06 INVESTIGATION OF PREMISES.

The Director of Finance shall refer each application for a permit as required by this Article to the City Manager and he or she shall cause an investigation to be made of the premises for which such permit is sought. When such investigation is completed and if found to comply in all respects with the terms of this Article, applicable rules and regulations established by all applicable state agencies, and the Zoning Ordinance of the City, the City Manager shall recommend the granting of such permit, otherwise he shall recommend the rejection of such application.

721.07 REFUND OF FEE.

When a permit applied for under the provisions of this Article is refused, the cash deposit required to be made with the application shall be returned to the applicant.

721.08 ISSUANCE OF PERMIT.

The Director of Finance shall issue the permit applied for under this Article upon receipt of the bond required by Section 721.09 and the application for such permit duly approved by the City Manager.

721.09 BOND REQUIRED.

No permit shall be issued under the provisions of this Article until the applicant therefor has deposited with the Director of Finance a bond, in accordance with the following:

If for a permit to drill for water, upon the furnishing of a bond in penalty of one thousand dollars ($1,000): if for a permit to drill for oil or gas, upon the furnishing of a bond in the penalty of fifty thousand dollars ($50,000); and if for a permit to drill for natural or artificial brine, the furnishing of a bond in the penalty of twenty-five thousand dollars ($25,000), in form and with surety approved by the City Manager, conditioned upon the faithful observance of all provisions of law or ordinance relating to drilling for water, oil, gas or natural or artificial brine, and upon condition that the permittee will clear the area of all machinery, derricks, buildings and other materials erected, used or allowed in the drilling or producing operation and all litter, debris, oil, salt or brine deposited on the premises whenever the well shall be abandoned, or the operation discontinued, and that he will pay to the owners of any buildings, improvements, goods or chattels located in the area, any extra cost of insurance on such property imposed by reason of the granting of the permit in the operation carried on thereunder, and any and all damages suffered by any person or corporation as to property in the City from fire, over and above the insurance carried thereon or from water, oil, gas or natural or artificial brine, or originating from the operation connected with such well, and will hold the City harmless from any and all liability growing out of the granting of such permit.

721.10 PENALTY FOR VIOLATION OF ALL SECTIONS OTHER THAN 721.03.

Any person who violates any section of this Article, other than Section 721.03, shall be subject to the penalties set forth in Section 701.99 of the Business and Taxation Code of the City of Morgantown.

721.11 SEVERABILITY.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable.

This ordinance shall be effective upon date of adoption.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN, REPEALING ARTICLE 161 OF THE CITY'S ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE HOUSING AUTHORITY.

WHEREAS, the City of Morgantown is agreeable to consolidating its Housing Authority with the Fairmont Housing Authority pursuant to Section 16-15-3b of the West Virginia Code;

WHEREAS, Section 16-15-3b of the West Virginia Code states that two or more cities may merge their housing authorities by joint resolution; provided that each such city holds a public hearing prior to adopting the joint resolution;

WHEREAS, the City of Morgantown is processing a joint resolution at the same time that this ordinance is proceeding before Morgantown City Council;

WHEREAS, it is the intent of this Ordinance that Article 161 of the City of Morgantown Administrative Code be repealed effective with the City of Morgantown's adoption of a joint resolution pursuant to Section 16-15-36 of the West Virginia Code.

NOW, THEREFORE, the City of Morgantown hereby ordains that Article 161 of its Administrative Code is repealed in its entirety, effective upon the date that Morgantown City Council adopts a joint resolution, pursuant to Section 16-15-3b of the West Virginia Code, merging the City of Morgantown Housing Authority and the City of Fairmont Housing Authority.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

RESOLUTION

A JOINT RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE COUNCIL FOR THE CITY OF MORGANTOWN, WEST VIRGINIA, PROVIDING FOR THE CONSOLIDATION OR MERGER OF THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE MORGANTOWN HOUSING AUTHORITY PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE §16-15-3b, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY TO BE KNOWN AS THE FAIRMONT-MORGANTOWN HOUSING AUTHORITY AND FURTHER APPROVING THE PLAN OF MERGER AND AUTHORIZING THE EXECUTION THEREOF

WHEREAS, by the provisions of West Virginia Code 16-15-3(a) there has been created in each city and county in this State a housing authority which shall be a public body corporate and politic; provided however, that no such authority shall transact any business or exercise its powers until or unless the governing body of the city or the county, by proper resolution, determines that there is need for such authority;

WHEREAS, by resolution duly adopted on May 12, 1958, the governing body of the City of Fairmont found and determined a need for such authority within its corporate limits and did provide for the empowerment of such an authority to be known as the "Housing Authority of the City of Fairmont, West Virginia;"

WHEREAS, by resolution duly adopted on May 19, 1970, the governing body of the City of Morgantown found and determined a need for such authority within its corporate limits and did provide for empowerment of such an authority to be known as the "Morgantown Housing Authority;"

WHEREAS, West Virginia Code 16-15-3b authorizes two (2) or more cities or counties, or any combination thereof, by joint resolution of their respective governing bodies to merge or consolidate their existing housing authorities and to establish a regional housing authority;

WHEREAS, the Board of Commissioners of the Housing Authority of the City of Fairmont, West Virginia, and the Board of Commissioners of the Morgantown Housing Authority have determined that it is desirable and in the best interests of the citizens of Fairmont and Morgantown for their respective authorities to consolidate or merge to form a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority;"

WHEREAS, the Board of Commissioners of the Housing Authority of the City of Fairmont, West Virginia, and the Board of Commissioners of the Morgantown Housing Authority have determined that the consolidation or merger to form a regional housing authority will benefit the

citizens of Fairmont and Morgantown and their respective jurisdictions due to increased efficiencies of scale and strengthening of financial and administrative resources;

WHEREAS, the Board of Commissioners of the Housing Authority of the City of Fairmont, West Virginia, and the Board of Commissioners of the Morgantown Housing Authority adopted a joint resolution approving said merger on September 13, 2011;

WHEREAS, the Housing Authority of the City of Fairmont, West Virginia, and the Morgantown Housing Authority have agreed to the terms and conditions of said consolidation or merger, which terms and conditions have been reduced to writing and are expressed in that certain "Plan of Merger Consolidating the Housing Authority of the City of Fairmont, West Virginia, and The Morgantown Housing Authority to Be Known as The Fairmont-Morgantown Housing Authority" dated the _____ day of _____, 2011, a copy of which is attached hereto;

WHEREAS, said Plan of Merger expressly provides for the following:

1. The transfer of assets and liabilities and the performance of all outstanding obligations and responsibilities; and
2. The membership, terms and manner of appointment of commissioners of the regional housing authority.

WHEREAS, by this joint resolution, the governing bodies of the City of Fairmont and the City of Morgantown manifest approval for the consolidation or merger of the Housing Authority of the City of Fairmont, West Virginia, and the Morgantown Housing Authority into a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority" and authorize the execution and delivery of the aforementioned Plan of Merger;

NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE COUNCIL FOR THE CITY OF FAIRMONT AND THE COUNCIL FOR THE CITY OF MORGANTOWN THAT:

(a) Finding - The Council for the City of Fairmont and the Council for the City of Morgantown hereby find that it is in the best interest of each City, respectively, and the citizens of each City, respectively, to consent to and approve the merger or consolidation of the Housing Authority of the City of Fairmont, West Virginia, and the Morgantown Housing Authority into a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority."

(b) Approval - The Council for the City of Fairmont and the Council for the City of Morgantown, after a review of same, do each hereby approve the terms and conditions of that certain "Plan of Merger Consolidating the Housing Authority of the City of Fairmont, West Virginia, and The Morgantown Housing Authority to Be Known as The Fairmont-Morgantown Housing Authority" dated the _____ day of _____, 2011, a copy of which plan

of merger is attached hereto, and the terms and conditions of which are incorporated herein by reference and made a part hereof as if fully set forth verbatim herein.

(c) Authorization - The Mayor of the City of Fairmont and the Mayor of the City of Morgantown be and each of them are hereby authorized and empowered on behalf of each City, respectively, to enter into, execute and deliver any agreements on behalf of each City, respectively, and any and all documents, deeds, or other instruments of any kind necessary and desirable to consummate the consolidation of the Housing Authority for the City of Fairmont, West Virginia, and the Morgantown Housing Authority, and to carry out the purpose and intent of this Joint Resolution including that certain Plan of Merger, a copy of which is attached hereto and made a part hereof, with such revisions, modifications, and changes from the respective form as approved hereunder as the Mayor(s) executing the same may approve, such approval and the propriety and necessity of said changes to be conclusively evidenced by the execution thereof, and to do and to cause to be done any other act necessary for the consolidation of the Housing Authority for the City of Fairmont, West Virginia, and the Morgantown Housing Authority to form a regional housing authority known as "The Fairmont-Morgantown Housing Authority."

(d) Applicable Law - The consolidation by merger of the Housing Authority of City of Fairmont, West Virginia, and the Morgantown Housing Authority into a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority shall be subject to applicable provisions of West Virginia Code 31E-11-1101 et seq.,

This Joint Resolution shall not take effect until passage by both the Council for the City of Fairmont and the Council for the City of Morgantown.

Passed by the Council for the City of Fairmont on this the 22nd day of November, 2011.

Passed by the Council for the City of Morgantown on this the _____ day of _____, 2011.

Mayor of the City of Fairmont

Attest: Janet L. Keller
City Clerk

Sign Here

Mayor of the City of Morgantown

Attest: _____
City Clerk

_____
City Manager of the City of Morgantown

Attest: _____
City Clerk

_____
City Manager of the City of Fairmont

Attest: _____
City Clerk

DRAFT of "EXHIBIT A"

PLAN OF MERGER

CONSOLIDATING THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA and THE MORGANTOWN HOUSING AUTHORITY into A REGIONAL HOUSING AUTHORITY TO BE NKOWN AS "THE FAIRMONT-MORGANTOWN HOUSING AUTHORITY"

WHEREAS, The Housing Authority of City of Fairmont Housing Authority ("FHA") is a public corporation and political subdivision of the State of West Virginia duly organized and in good standing under the laws of the State of West Virginia as a housing authority created pursuant to Section 16-15-3b of the West Virginia Code;

WHEREAS, FHA was formed pursuant to resolutions duly adopted by the City of Fairmont, West Virginia;

WHEREAS, FHA is vested with all requisite power and authority to carry on its programs and activities as a housing authority, and has the right to exercise all powers granted to a housing authority by Chapter 16, Article 15 of the Code of West Virginia, 1931, as amended (hereinafter referred to as the "State Housing Law");

WHEREAS, Morgantown Housing Authority ("MHA") is a public corporations and political subdivision of the State of West Virginia duly organized and in good standing under the laws of the State of West Virginia as a housing authority created pursuant to the State Housing Law;

WHEREAS, MHA was formed pursuant to resolutions duly adopted by the City of Morgantown, West Virginia;

WHEREAS, MHA is vested with all requisite power and authority to carry on its programs and activities as a housing authority, and has the right to exercise all powers granted to a housing authority by the State Housing Law;

WHEREAS, the City of Fairmont, West Virginia and the City of Morgantown, West Virginia have determined that it is desirable and in the best interests of the citizens of Fairmont and Morgantown for FHA and MHA to consolidate pursuant to the enacted and effective Section 16-15-3b of the State Housing Law to form a regional housing authority to be known as "The Fairmont-Morgantown Housing Authority;"

WHEREAS, the governing bodies of the Cities of Fairmont and Morgantown have previously adopted that certain Joint Resolution entitled:

"JOINT RESOLUTION OF THE MORGANTOWN HOUSING AUTHORITY, WEST VIRGINIA AND THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA PROVIDING FOR THE CONSOLIDATION OF THE MORGANTOWN HOUSING AUTHORITY WITH THE CITY OF FAIRMONT HOUSING AUTHORITY PURSUANT

TO SECTION 16-15-3b OF THE CODE OF WEST VIRGINIA, 1931, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY TO BE KNOWN AS THE FAIRMONT – MORGANTOWN HOUSING AUTHORITY, AND ADOPTING A PLAN OF MERGER RELATED THERETO." (the "Joint Resolution")

NOW, THEREFORE, WITNESSETH, that, pursuant to the Joint Resolution, the Cities of Fairmont and Morgantown hereby agree as follows:

1. The names of the housing authorities which are to be consolidated are The Housing Authority of the City of Fairmont (sometimes hereinafter referred to as "FHA") and The Morgantown Housing Authority (sometimes hereinafter referred to as "MHA"). The name of the consolidated regional housing authority shall be "The Fairmont-Morgantown Housing Authority."
2. Since each of the housing authorities to be consolidated is a public corporation having no members or shareholders, neither shares of stock nor any membership interests shall be issued, exchanged or redeemed as a result of this consolidation.
3. Since the consolidated regional housing authority will be a public corporation organized and existing under the State Housing Law, there will be no shares, membership interests, or obligations or securities of the consolidated regional housing authority issued as a result of the consolidation.
4. Since the consolidating housing authorities are public corporations formed, existing and operating under the provision of the State Housing law, neither of the consolidating housing authorities was formed pursuant to articles of incorporations. The consolidated regional housing authority formed by the subject consolidations will continue to be a public corporation organized, existing and operating pursuant to the State Housing Law, and will not have articles of incorporation.
5. The consolidated regional housing authority shall operate pursuant to the by-laws of FHA, originally adopted, as the same have been amended from time to time, and as the same may hereafter be amended from time to time. Any reference in said by-laws to "The Housing Authority of the City of Fairmont" shall be amended to read "The Fairmont-Morgantown Housing Authority."

Shareholders or Members Entitled to Vote

6. Each being a public corporation organized, existing and operating under the State Housing Law, neither FHA nor MHA has any shareholders or members entitled to vote upon the consolidation of FHA and MHA.

Approval of Consolidation

7. A regular meeting of the governing body of the City of Fairmont was held on _____. During the course of such meeting, the governing body of the City of Fairmont held a public hearing to present the proposed consolidation of FHA and MHA to the public and to receive public comment and input regarding the same.

8. A regular meeting of the governing body of the City of Morgantown was held on _____. During the course of such meeting, the governing body of the City of Morgantown held a public hearing to present the proposed consolidation of FHA and MHA to the public and to receive public comment and input regarding the same.
9. A regular meeting of the governing body of the City of Fairmont was held on _____. At such meeting, the governing body of the City of Fairmont adopted the Joint Resolution, thereby authorizing the consolidation of FHA and MHA and approving this Plan of Merger.
10. A regular meeting of the governing body of the City of Morgantown was held on _____. At such meeting, the governing body of the City of Morgantown adopted the Joint Resolution, thereby authorizing the consolidation of FHA and MHA and approving this Plan of Merger.

Appointment of Commissioners

11. As of the effective date of this Plan of Merger, as set forth hereinbelow, the terms of office of all of the current commissioners of FHA, and the terms of office of all the current commissioners of MHA, shall terminate.
12. Subsequent to the execution of this Plan of Merger, but prior to the effective date of the Plan of Merger, the Cities of Fairmont and Morgantown shall appoint the commissioners of the consolidated regional housing authority in the following manner:
    a. The governing body of the City of Fairmont shall be entitled to appoint two (2) commissioners to the board of commissioners of the consolidated regional housing authority. The commissioners who are first appointed by the City of Fairmont shall be designated to serve for terms of two (2) years and four (4) years, respectively, from the date of their appointment. Thereafter commissioners appointed by the City of Fairmont shall serve a term of office of five (5) years, except that all vacancies shall be filled for the unexpired term. A certificate of the appointment or reappointment of any commissioner appointed by the City of Fairmont shall be filed with the Clerk of the City of Fairmont and shall be conclusive evidence of the due and proper appointment of a commissioner by the City of Fairmont.
    b. The governing body of the City of Morgantown shall be entitled to appoint two (2) commissioners to the board of commissioners of the consolidated regional housing authority. The commissioners who are first appointed by the City of Morgantown shall be designated to serve for terms of one (1) years and three (3) years, respectively, from the date of their appointment. Thereafter commissioners appointed by the City of Morgantown shall serve a term of office of five (5) years, except that all vacancies shall be filled for the unexpired term. A certificate of the appointment or reappointment of any commissioner appointed by the City of Morgantown shall be filed with the Clerk of the City of Morgantown and shall be conclusive evidence of the due and proper appointment of a commissioner by the City of Morgantown.

c. The fifth commissioner appointed to the board of commissioners of the consolidated regional housing authority shall be a resident of a residential property owned or operated by the consolidated regional housing authority, or a resident receiving rental assistance pursuant to a program administered by the consolidated regional housing authority. This commissioner shall be known as the "Resident Commissioner." The Resident Commissioner shall be first appointed by the City of Morgantown. Each Resident Commissioner shall serve a term of office of five (5) years, except that all vacancies shall be filled for the unexpired term alternately by the City of Fairmont and then the City of Morgantown. A certificate of appointment or reappointment of any resident Commissioner shall be filed with the Clerk of the appointing city and shall be conclusive evidence of the due and proper appointment of the Resident Commissioner by the City of Fairmont or City of Morgantown.

d. The qualifications, privileges, duties, rules and regulations relating to the commissioners of the consolidated regional housing authority shall be governed by the State Housing Law.

Effect of Consolidation

13. As of the Effective Date (defined hereinbelow) of the consolidation of FHA and MHA, all property and assets of FHA, and all property and assets of MHA, of all types and any nature, wherever situate, whether tangible or intangible, shall be deemed to have been assigned, transferred and set over unto The Fairmont-Morgantown Housing Authority. Within thirty (30) days of the Effective Date of the consolidation, a confirmatory deed, assignment and bill of sale from FHA and MHA to The Fairmont-Morgantown Housing Authority shall be executed, delivered and recorded in the office of the Clerk of the County Commission of Marion County, West Virginia evidencing such transfer and assignment.
14. Upon the Effective Date (defined hereinbelow) of the consolidation of FHA and MHA, all current and outstanding debts, obligations responsibilities and duties of FHA, and all current and outstanding debts, obligations responsibilities and duties of MHA, shall be deemed to have been assumed by The Fairmont-Morgantown Housing Authority.
15. As of the Effective Date (defined hereinbelow), The Fairmont-Morgantown Housing Authority shall be organized and in existence, and shall operate pursuant to, the State Housing Law as a regional housing authority.

Effective Date of Consolidation; First Meeting of Commissioners

16. The consolidation of FHA and MHA to form a consolidated regional housing authority known as "The Fairmont-Morgantown Housing Authority" shall become effective at 12:01 a.m. EDT on _____ (the "Effective Date").
17. At 5:00 p.m. EDT on _____ , the newly appointed commissioners of The Fairmont-Morgantown Housing Authority shall hold their first meeting. At such meeting,

the commissioners shall organize for the transaction of business in accordance with Section 16-15-5 of the State Housing Law.

IN WITNESS WHEREOF, the City of Fairmont, West Virginia has caused the Plan of Merger to be executed by its Mayor thereunto duly authorized, and the City of Morgantown, West Virginia has caused this Plan of Merger to be executed by its Mayor thereunto duly authorized, all as of the _____ day of _____, 2011.