BOND AUTHORIZING ORDINANCE OF
THE CITY OF MORGANTOWN

AN ORDINANCE AUTHORIZING AND DIRECTING THE CURRENT REFUNDING OF THE TAX INCREMENT REVENUE BONDS, SERIES 2010 (SUNNYSIDE UP PROJECT PLAN NO. 1) OF THE CITY OF MORGANTOWN (THE "SERIES 2010 BONDS"); AUTHORIZING AND DIRECTING THE ISSUANCE OF NOT MORE THAN $6,500,000 AGGREGATE PRINCIPAL AMOUNT OF TAX INCREMENT REVENUE AND REFUNDING BONDS, SERIES 2014 (SUNNYSIDE UP PROJECT NO. 2), OF THE CITY OF MORGANTOWN TO REFUND AND REDEEM IN FULL THE CITY'S OUTSTANDING SERIES 2010 BONDS, TO FINANCE COSTS OF THE DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF MORGANTOWN REDEVELOPMENT DISTRICT NO. 3 AND ALL NECESSARY APPURTENANCES AND RELATED FACILITIES, OTHER EXPENSES AND COSTS RELATED THERETO AND TO ISSUANCE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, A TAX AND NON-ARBITRAGE CERTIFICATE; AUTHORIZING EXECUTION AND DELIVERY OF OTHER DOCUMENTS, INSTRUMENTS, AGREEMENTS AND CERTIFICATES; AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF SUCH BONDS; PROVIDING PARAMETERS FOR THE PRINCIPAL AMOUNTS, MATURITIES, INTEREST RATES AND OTHER TERMS OF SUCH BONDS; AUTHORIZING THE MAYOR AND CITY MANAGER TO APPROVE A CERTIFICATE OF DETERMINATIONS RELATING TO THE FINAL TERMS OF THE BONDS; APPOINTING A TRUSTEE, REGISTRAR, PAYING AGENT AND OTHER PARTICIPANTS IN THE FINANCING; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS RELATING TO THE PROJECT AND ISSUANCE OF SUCH BONDS.

WHEREAS, The City of Morgantown, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer" or "City"), under Chapter 7, Article 11B of the Code West Virginia, 1931, as amended (the "Act"), has plenary power and authority to issue tax increment obligations to finance the costs of acquisition, construction and equipping of a project or projects included in a development or redevelopment plan approved by the West Virginia Development office and adopted by the governing body of the Issuer, that are located within a development or redevelopment district, which project costs may include (i) interest prior to and during the acquisition, construction and equipping of a project and for a reasonable time thereafter; (ii) such reserves as may be required; (iii) reimbursement of costs of any interim financing or cash expenditures entered on behalf of projects in the development or redevelopment district; and (iv) any and all other expenses incidental to planning, carrying out and financing the project;

WHEREAS, pursuant to the Act, the City Council of the Issuer (the "City Council") did, on December 16, 2008, following all necessary actions, publications, public hearings and approvals, enact an ordinance (the "TIF District Ordinance") designating certain parcels of real property, together with certain personal property situated thereon, located within the Sunnyside area of The City of Morgantown, as a redevelopment district under the Act to be known as "City of Morgantown Redevelopment District No. 3" (the "TIF District") and establishing a tax increment financing fund for the TIF District (the "TIF Fund");

WHEREAS, the TIF District Ordinance also approved a project plan for the TIF District to be known as the Sunnyside Up Project Plan No. 1 (the "Project Plan"), to finance certain public improvements consisting generally of some or all of the following: water lines, storm water management culverts and facilities, sewer lines, road improvements, streetscape systems, traffic control, pedestrian ways and systems, utility relocations, lighting and related infrastructure, land and right-of-way acquisition, demolition and site preparation necessary in connection with the foregoing (the "Project");

WHEREAS, as provided in the Act, the Executive Director of the West Virginia Development Office approved the establishment of the TIF District and the execution of the Project Plan by the Issuer pursuant to a letter dated December 2, 2008;

WHEREAS, pursuant to the Act, the Issuer has heretofore issued its Tax Increment Revenue Bonds, Series 2010 (Sunnyside Up Project Plan No. 1), dated June 16, 2010 (the "Prior Bonds"), the proceeds of which were applied in part to finance a portion of the costs of the design, acquisition, construction and equipping of the Project within TIF District or adjacent to and benefitting the TIF District;

WHEREAS, under provisions of the Act, the Issuer is authorized and empowered to issue tax increment refunding revenue bonds to refund, pay in full and discharge all or any part of the outstanding Prior Bonds, to fund a reserve account pledged to the payment of such tax increment refunding revenue bonds and

to pay the costs associated with the issuance of such tax increment refunding revenue bonds and related costs;

WHEREAS, the Issuer has determined that it would be in its best interest to currently refund and repay in full the Prior Bonds in order to increase the amount of tax increment financing obligations which can be utilized by the Issuer for the purpose of funding additional costs of the Project;

WHEREAS, the Issuer now desires to currently refund and repay I full the Prior Bonds and to finance additional costs of the design, acquisition, construction and equipping of the Project, or a portion thereof, through the issuance of its tax increment revenue bonds to be designated "The City of Morgantown Tax Increment Revenue and Refunding Bonds, Series 2014 (Sunnyside Up Project No. 2)" (the "Bonds");

WHEREAS, the current refunding and repayment in full of the Prior Bonds and the financing of costs of the Project by the Issuer will benefit the inhabitants of the City, will increase opportunities for employment in the City and will help in establishing a balanced economy within the City, and the health, happiness, right of gainful employment and general welfare of the citizens and residents of the City will be promoted by the Project and the repayment in full of the Prior Bonds as aforesaid, and the financing of the Project and the current refunding of the Prior Bonds is a public purpose of the Issuer under the Act; and

WHEREAS, the Issuer desires to take all steps necessary for the financing of the Project and the current refunding of the Prior Bonds pursuant to the issuance of the Bonds as expeditiously as possible.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MORGANTOWN, AS FOLLOWS:

Section 1. It is hereby found and determined, following the public hearing heretofore held before the Issuer, that the Prior Bonds should be currently refunded and repaid in full, that the Issuer should undertake the design, acquisition, construction and equipping of the Project, that the Bonds should be issued for the purposes of financing the costs of currently refunding the Prior Bonds, paying costs of the Project and related costs, and that the current refunding of the Prior Bonds and financing of costs of the Project is a public purpose of the Issuer, promotes the public purposes under the Act and is in the public interest, and that the current refunding of the Prior Bonds and financing of costs of the Project in conformance with the terms and provisions hereof complies in all respects with the Act.

Section 2. To accomplish the purposes of the Act, the Issuer hereby authorizes the issuance of the Bonds in an aggregate principal amount not to exceed $6,500,000, for the purposes of: (i) currently refunding and repaying in full the Prior Bonds, (ii) paying costs of design, acquisition, construction and equipping of the Project, (iii) paying capitalized interest, if any, on the Bonds, (iv) funding or partially funding a reserve fund for the Bonds, if funded from Bond proceeds, and

(v) paying costs of issuance of such Bonds. The Bonds shall be dated such date or dates, shall bear interest payable at such times and at such rates (not to exceed 8% per annum), shall mature on such dates and in such principal amounts (with final maturity no later than June 1, 2038), shall have such provisions for redemption and shall have such other provisions as are set forth in the Indenture (hereinafter defined). The Bonds shall be sold to such purchaser or purchasers (the "Purchaser") as shall be approved and set forth in the Certificate of Determinations (hereinafter defined) to be executed and delivered by the Issuer at a price not less than 100% of the principal amount thereof.

Section 3. The Issuer hereby authorizes and approves the issuance of the Bonds within the parameters set forth in Section 2 above, and hereby further authorizes the Mayor and the City Manager of the Issuer to approve the final terms thereof and the final purchaser or purchasers thereof and the forms of certain documents to be executed and delivered in connection with the issuance of the Bonds as shall be set forth in a Certification of Determinations to be executed thereby (the "Certificate of Determinations"), which Bonds may be issued in additional series or with different designations, all as may be set forth in the Certificate of Determinations.

Section 4. The Bonds, together with the interest thereon and other costs incidental thereto, shall be secured solely by the pledges effected by the Indenture herein authorized and defined, and by the TIF Fund and tax increment and other revenues and properties pledged for their payment in accordance with the Act. The Bonds, together with the interest thereon and other costs incidental thereto, shall not be deemed to be and shall not constitute an indebtedness of the Issuer, but shall be special and limited obligations of the Issuer, payable solely from the tax increment and other revenues and properties pledged for their payment under the Indenture. Neither the Bonds nor the interest thereon, nor any other cost or charge in connection therewith, shall be a charge against or pledge of the property, faith and credit or taxing power, if any, of the State of West Virginia or the Issuer, except as to such property expressly provided therefor in the Indenture, nor shall the same ever constitute an indebtedness of the State of West Virginia or the Issuer within the meaning of any constitutional provision or statutory limitation or constitute or give rise to a pecuniary liability of the State of West Virginia or the Issuer. No recourse shall be had for the payment of the principal of and interest on the Bonds against the Issuer or any official or member of the Issuer. The holders of the Bonds shall have no right to have taxes levied by the legislature of the State of West Virginia or the taxing authority, if any, of the Issuer for the payment of the principal of, premium, if any, or interest on the Bonds, but the Bonds shall be payable solely from the Tax Increment Revenues deposited into the TIF Fund and pledged therefor under the Indenture.

Section 5. The Indenture of Trust (the "Indenture") to be dated on or prior to the date of delivery of the Bonds, by and between the Issuer and The Bank of New York Mellon, who shall serve as trustee, registrar and paying agent (the "Trustee"), substantially in the form submitted to this meeting and made a part of this Ordinance as though set forth in full herein, shall be and the same is hereby approved. The Mayor and City Manager of the Issuer are hereby authorized and

directed to execute, acknowledge, if necessary, and deliver the Indenture, with such changes, insertions, variations and omissions as may be approved by the Mayor and City Manager, and the City Clerk is authorized and directed to affix the seal of the Issuer thereto and to attest the same. The execution of the Indenture by the Mayor and City Manager shall be conclusive evidence of such approval.

Section 6. The Bond Purchase Agreement (the "Bond Purchase Agreement") to be dated the date of placement and sale of the Bonds to Purchaser, by and between the Purchaser and the Issuer, substantially in the form submitted to this meeting and made a part of this Ordinance as though set forth in full herein, shall be and the same hereby is approved. The Mayor and City Manager of the Issuer are hereby authorized and directed to execute and deliver the Bond Purchase Agreement, with such changes, insertions, variations and omissions as may be approved by the Mayor and City Manager. The execution of the Bond Purchase Agreement by the Mayor and City Manager shall be conclusive evidence of the approval of such changes, insertions, variations and omissions.

Section 7. The Tax and Non-Arbitrage Certificate (the "Tax Certificate") to be dated as of the date of delivery of the Bonds and executed and delivered by the Issuer, substantially in the form as shall be approved by the Mayor and City Manager pursuant to the Certificate of Determinations shall be and the same is hereby approved for execution by the Issuer and compliance by the Issuer with the terms thereof. The Mayor and City Manager of the Issuer are hereby authorized and directed to execute, acknowledge, if necessary, and deliver the Tax Certificate, with such changes, insertions, variations and omissions as may be approved by the Mayor and City Manager. The execution of the Tax Certificate by the Mayor and City Manager shall be conclusive evidence of such approval.

Section 8. The Bonds shall be issued in fully registered form in accordance with the provisions of the Indenture and shall be delivered to the Trustee to be authenticated, registered and delivered to the Purchaser thereof in accordance with the terms of the Indenture. The Mayor, City Manager and Clerk of the Issuer shall execute the Bonds as necessary and affix, imprint or otherwise reproduce the official seal of the Issuer thereto and the Bonds shall contain a recital to the effect that the Bonds are issued pursuant to the Act.

Section 9. The Mayor, City Manager and Clerk and any other proper officers and employees of the Issuer, together with all other members and employees thereof, are hereby authorized and directed to execute, acknowledge, if necessary, and deliver any and all papers, documents, agreements, certificates and instruments, to affix the seal of the Issuer and attest the same for and on behalf of the Issuer and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Ordinance, the Indenture, the Bond Purchase Agreement, the Tax Certificate and other documents relating thereto.

Section 10. All covenants, stipulations, obligations and agreements of the Issuer contained herein and contained in the Indenture, the Bond Purchase Agreement, the Tax Certificate and other documents relating thereto shall

be deemed to be the special and limited covenants, stipulations, obligations and agreements of the Issuer to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Issuer and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the Issuer or the officials thereof by the provisions hereof and by the Indenture shall be exercised or performed by the Issuer or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

Section 11. No covenant, stipulation, obligation or agreement herein contained or contained in the Indenture or other documents relating thereto shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Issuer in his or her individual capacity and neither the members of the Issuer nor any officer executing the Bonds shall be subject to any personal liability or accountability by reason of the issuance of the Bonds. No member of the Issuer or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 12. Steptoe & Johnson PLLC is hereby appointed as bond counsel to the Issuer, Piper Jaffray & Co. is hereby appointed as Placement Agent to the Issuer, and Bank of New York Mellon is hereby appointed as trustee, registrar and paying agent for the Bonds.

Section 13. The Issuer hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of paragraph (3) of Section 265(b) of the Code and covenants that the Bonds do not constitute private activity bonds as defined in Section 141 of the Code and as determined in accordance with Section 265(b)(3) of the Code, and that not more than $10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Code), including the Bonds, have been or shall be issued by the Issuer, during the calendar year 2014, all as determined in accordance with the Code. For purposes of this paragraph and for the purposes of applying such Section 265(b)(3) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 265(b)(3) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of Section 265(b)(3)(C) or (D) of the Code and all entities benefitting thereby shall be treated as one issuer. None of the Bonds are part of a direct or indirect composite issue.

Section 14. The designation of any of the Bonds may be modified without further action by the Issuer to reflect series designation, issuance dates or other matters.

Section 15. The laws of the State of West Virginia shall govern the construction of this Ordinance and all Bonds issued hereunder.

Section 16. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 17. All previous ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 18. The undersigned Mayor and City Manager of the Issuer hereby approve the issuance of the Bonds following the public hearing thereon.

Section 19. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption and entry of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Manager, City Clerk and members of the City Council of The City of Morgantown were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 20. This Ordinance shall take effect immediately upon final enactment following a public hearing hereon.

Section 21. Following the first reading by title hereof, an abstract of this Ordinance, determined by the City to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in *The Dominion Post*, being a newspaper published and of general circulation in The City of Morgantown, together with a notice stating that this Ordinance has been introduced and that the Issuer contemplates the final enactment thereof and that any person interested may appear before the Council upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the City Clerk for review by interested parties during the office hours of the City Clerk.

At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

First Reading: November [5], 2014

Second Reading: November [18], 2014
following public hearing

Adopted this November [18], 2014.

THE CITY OF MORGANTOWN

By: _____
Its Mayor

By: _____
Its City Manager

APPROVED AND CORRECT AS TO FORM:

By: _____
Its City Attorney

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of The City of Morgantown, does hereby certify that the foregoing Ordinance was duly adopted and enacted by the City Council of The City of Morgantown following a public hearing thereon, at regular meetings duly held, pursuant to proper notice thereof, on November [5], 2014 and November [18], 2014, quorums being present and acting throughout, and which Ordinance has not been modified, amended or revoked and is a true, correct and complete copy thereof as of this _____, 2014.

By:_____
City Clerk