



The City of Morgantown

389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

AGENDA MORGANTOWN CITY COUNCIL COMMITTEE OF THE WHOLE

Tuesday, April 26, 2022 at 7:00 PM

NOTE: Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled.

1. PRESENTATIONS:

A. 2022 WV GIS Conference Announcement and Invitation - Marvin Davis, GIS Analyst

B. The Historic Morgantown Post Office Building - Dr. Jane Cardi

C. Morgantown Parking Authority Maintenance Shop and Break Area - Dana McKenzie - Parking Authority Director

D. Morgantown Area Partnership - Russ Rogerson - President Morgantown Area Partnership

2. PUBLIC PORTION:

3. ITEMS FOR DISCUSSION:

A. An Ordinance authorizing a Lease Agreement between The Historic Morgantown Post Office Building, Inc. and the City of Morgantown

B. Morgantown Parking Authority Maintenance Shop and Break Area - Dana McKenzie - Parking Authority Director

C. Pension Fund rules and regulations

D. Discussion of Home Rule initiatives

4. EXECUTIVE SESSION:

A. Pursuant to West Virginia Code section 6-9A-4(b)(12) to discuss pending or potential litigation

5. ADJOURNMENT:

REAL ESTATE LEASE

THIS REAL ESTATE LEASE (this "Lease"), entered into on the ____ day of _____ 2022, to be effective as of the 1st day of July 2022 ("Effective Date"), by and between The Historic Morgantown Post Office Building, Inc., a West Virginia corporation, ("Landlord"), and The City of Morgantown, a municipal corporation of the State of West Virginia ("Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of that certain property in the City of Morgantown, Monongalia County, West Virginia, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Real Estate"); and

WHEREAS, Tenant desires to lease certain portions of the Real Estate from Landlord on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00), the premises and the respective undertakings of the parties hereinafter set forth, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant do hereby covenant and agree as follows:

ARTICLE 1 - DEFINITIONS

As used herein, the following terms and phrases shall have the meanings indicated:

1.1 "Demised Premises" shall mean certain Improvements on the Real Estate, as more particularly described on Exhibit B attached hereto and incorporated herein.

1.2 "Improvements" shall mean the buildings, structures, and improvements now on the Demised Premises, and all fixtures of every kind or nature situated thereon or pertaining thereto or used in connection therewith, excluding only the Personal Property. Landlord and Tenant agree, for themselves and all those claiming under or through them, that the Improvements are, and shall for all purposes constitute, real property.

1.3 "Personal Property" shall mean the trade fixtures and the inventory, furniture, furnishings, machines, and equipment owned by Tenant and now or hereafter located on or used in connection with the Demised Premises that are movable and not permanently attached to the Demised Premises, or any part thereof.

1.4 "Taxes" shall mean all taxes, assessments, excises, levies, license and permit fees and, without limitation, other governmental charges and costs of every kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever (including, but not limited to, assessments for streets, sidewalks, sewers, lights and other improvements and general and special state, county and city taxes), which were incurred during the term of this Lease with respect to the Demised Premises or the Improvements on the Demised Premises.

1.5 “Pre-Revitalization Period” shall mean the period of time beginning on the Effective Date and ending with the beginning of the Post-Revitalization Period.

1.6 “Post-Revitalization Period” shall mean the period of time beginning when the interior portions of the Demised Premises become usable after a period of rehabilitation, revitalization and construction, regardless of continuing construction in areas other than the interior portions of the Demised Premises, subject to the provisions of Section 10.4 of this Agreement, and continuing through the initial Term and/or any Renewal Term.

ARTICLE 2 – DEMISE AND UTILITIES

2.1 Demise. Upon and subject to the terms and conditions set forth herein, Landlord hereby leases and grants a leasehold estate to Tenant in, and Tenant hereby leases from Landlord, the Demised Premises.

2.2 Utilities and Services. Beginning on the date that this Lease is executed by both parties and running through to the end of the term of this Lease, Tenant shall pay its proportionate percentage of the following utilities: electric, water, sewer, and gas services. Tenant’s proportionate percentage shall be determined by dividing Tenant’s useable area within the Demised Premises by the total useable area within the Real Estate. Tenant shall be solely responsible for paying for its own connection fees and monthly charges for telephone and other related communication services for the Demised Premises. Landlord shall be solely responsible for providing solid waste and recycling collection service for the Real Estate, which Tenant shall be permitted to use as a condition of this Lease.

2.3 Warranties by Landlord. Landlord warrants and represents to Tenant as follows:

(a) Authority. Landlord is a West Virginia corporation and qualified to transact business in the State of West Virginia. All requisite corporate consents necessary for Landlord to enter this Lease have been duly obtained and remain in full force and effect.

(b) Quiet Environment Warranty. Landlord and any successor in interest shall not disturb Tenant’s right to possess the Demised Premises during the term of this Lease so long as Tenant is not in Default of this Lease beyond any applicable notice and cure periods.

(c) Additional Warranties. Landlord represents, warrants, and covenants to Tenant that: (i) there are no defects in the state of title to the Real Estate that inhibit or may inhibit either: (A) the current or future use or development of the Real Estate; or (B) the use of the Demised Premises by Tenant for its permitted uses, and Landlord shall not execute any proposed instrument to be recorded against the Real Estate that creates any such defects; (ii) the Tenant’s permitted uses are in compliance with and do not conflict with and shall not conflict during the Term with any and all laws, rules, or regulations, or the certificate of occupancy for the Building; (iii) the existing improvements and the improvements to be constructed on the Real Estate are and will be sufficient and in compliance with all laws, rules, and regulations for Tenant's permitted uses; (iv) the structural portions of the building are in good condition and working order, and are in compliance with all applicable laws, rules, and regulations including, but not limited to, the Americans with Disabilities Act; (v) the Real Estate is properly zoned for the permitted uses of the Demised Premises by Tenant; (vi) the Real Estate complies with local laws relating to loading and

parking requirements; and (vii) the work described as Revitalization, and any and all other improvements to the Real Estate, shall be completed in a good and workmanlike manner and in compliance with all applicable Laws and delivered to tenant in good condition and working order.

2.4 Warranties by Tenant. Tenant warrants and represents to Landlord as follows:

(a) Authority. Tenant is authorized and qualified to transact business in the State of West Virginia. All requisite consents necessary for Tenant to enter this Lease have been duly obtained and remain in full force and effect.

(b) Inspection and Condition of Demised Premises. Tenant has made a visual inspection of the Demised Premises and agrees that the Demised Premises are suitable for Tenant’s purpose. At the commencement of the term, Tenant shall accept the Demised Premises in its existing condition and state of repair. Tenant agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord with respect to the Demised Premises except as contained in the provisions of this Lease.

2.5 Remeasurement. At any time during the Term of this Lease, Tenant shall have the right to cause the rentable square footage of the Real Estate to be re-measured by an architect of its choice using Building Owners and Managers Association International (BOMA) standards. If such re-measurement results in a change of the rentable square footage of the Real Estate or the Demised Premises, the parties shall execute an amendment to this Lease reflecting such change, and all charges and other provisions under this Lease that are based on such square footage shall be modified accordingly. Any overpayments by Tenant shall be promptly refunded by Landlord, and any underpayments by Tenant shall be paid with the next accruing monthly rent payment.

2.6 Common Areas.

(a) Tenant shall have the non-exclusive right, at no additional charge to Tenant, to use any portions of the Real Estate that are designated by Landlord for the common use of tenants and others, including, without limitation, the hallways, entryways, stairs, vending area, elevators, driveways, sidewalks, loading areas, trash facilities, and all other areas and facilities of the Real Estate provided and designated from time to time by Landlord for the general nonexclusive use and convenience of Tenant with other tenants and their respective employees, invitees, licensees or other visitors ("Common Areas"). During the Pre-Revitalization Period, Tenant shall continue to have access to five (5) parking spaces, including four (4) general parking spaces and one (1) accessible parking space for those with disabilities, to be used by Tenant’s officers, employees, invitees, and licensees, in common with other tenants of the Real Estate. Tenant’s access to parking during the Pre-Revitalization Period shall be limited or terminated, without reduction in rent, to the extent that the use of any parking space is reasonably needed or obstructed for or by construction efforts.

(b) Landlord shall keep, repair, operate, and maintain the Common Areas in good repair sufficient for Tenant’s use consistent with the purposes of this Lease. In the event Tenant is prevented from effectively conducting its business as a result of: (i) any failure by Landlord to provide access to the Real Estate; or (ii) any disturbance or disruption of Tenant’s operations as a result of any repairs, improvements, or modifications to or closure of the Real

Estate including the building thereon, the Demised Premises, or the Common Areas which continues for more than five (5) consecutive days, then Rent and all other charges and fees shall be proportionately abated on a per diem basis (based on the unusable area of the Demised Premises in proportion to the total area of the Demised Premises) until such interference is eliminated or the Premises are otherwise rendered tenantable again. Additionally, if such interference continues for a period of thirty (30) or more consecutive days, then Tenant shall have the right and option to cancel this Lease by giving written notice to Landlord within ten (10) days after the end of such 10-day period.

ARTICLE 3 - TERM

3.1 Term. The initial Term for the Demised Premises shall be 42 months commencing on July 1, 2022 and continuing to and ending on December 31, 2025, subject to earlier termination as hereinafter set forth (the “Term”).

3.2 Extension of Term. The initial Term may only be extended upon written agreement of Landlord and Tenant.

ARTICLE 4 – RENT, TAXES AND DEPOSITS

4.1 Rent.

(a) Pre-Revitalization Period. The annual rental rate (the “Rent”) during the Pre-Revitalization Period shall be Thirty-Nine Thousand Three Hundred Sixty and 00/100 Dollars (\$39,360.00), calculated at \$10.00 per square foot. The Rent during the Pre-Revitalization Period shall be paid in equal monthly installments of Three Thousand Two Hundred Eighty and 00/100 Dollars (\$3,280.00) beginning July 1, 2022 and continuing the first (1st) of each consecutive calendar month thereafter.

(b) Post-Revitalization Period. The Rent during the Post-Revitalization Period shall be calculated on an annual basis at \$15.00 per square foot, and shall be paid in equal monthly installments.

4.2 Other. Tenant agrees to pay during the term hereof: (a) all costs and expenses relating to normal repairs and maintenance of the Demised Premises; (b) all utility costs for the Demised Premises as provided in Section 2.2; and (c) all costs of insurance as provided in Section 8.1(a). It is further agreed that Tenant shall pay for its own trash removal, janitorial services, and miscellaneous supplies for the Demised Premises such as light bulbs, cleaning supplies, and other related items.

ARTICLE 5 - USE, COMPLIANCE AND MANAGEMENT

5.1 Use.

(a) Tenant may use and occupy the Demised Premises for all activities related to the operation of a business office and a museum open to the public, including regular entry by

members of the public and the hosting of events and other gatherings. Tenant shall comply with all laws, ordinances and regulations applicable to the use and occupancy of the Demised Premises.

(b) Tenant shall not use, improve, occupy or permit or suffer the use, improvement or occupancy of the Demised Premises, or any part thereof, or keep or allow to be kept any products, materials, machinery, equipment, substance or other thing in any manner which would be a violation of any current state or federal law.

5.2 Improvements. Subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, Tenant may make reasonable and desirable interior changes, improvements, alterations or additions to the Demised Premises. Tenant shall be solely responsible for the cost of any interior changes, improvements, alterations or additions to the Demised Premises approved under this Section. Any Improvements constructed by Tenant under the provisions hereof shall become the property of Landlord at the expiration or termination of the term of this Lease.

5.3 Signage. Landlord shall provide a directory of tenants in the entrance lobby area of the Building and a floor directory of tenants on each of the floors (if applicable), which shall include Tenant's name, or, at Tenant's election, "Morgantown History Museum."

(a) Landlord shall order and install door signage acceptable to Tenant in its reasonable discretion bearing Tenant's name, or, at Tenant's election, "Morgantown History Museum"; except that Tenant may install its own door signage graphics subject to Landlord's prior review and approval, not to be unreasonably withheld.

(b) Tenant shall have the right to install (1) an identification sign on the exterior of the Building and on any monument signage associated with the Building that is used for tenant identification, subject to Landlord's prior review and approval, not to be unreasonably withheld; and (2) directional signage to the Premises from any parking areas.

(c) Landlord shall have the right to temporarily remove any sign in order to paint, or to make repairs, alterations, or improvements in or upon the Building or Premises, at its expense, and shall thereafter reaffix same, at its expense.

ARTICLE 6 – REPAIR, MAINTENANCE AND LIENS

6.1 Maintenance. Tenant shall, at its own cost and expense, keep the Demised Premises in good repair and condition. Upon the expiration of the initial Term or any Renewal Term, as applicable, Tenant shall peacefully and quietly leave, surrender and yield up unto Landlord the Premises in such state of repair as is required herein except for reasonable wear and tear.

6.2 Landlord's Obligation. Landlord shall not be required to make any capital improvements solely for the convenience of Tenant. Landlord shall, at its own cost and expense, keep the Real Estate in good repair and condition, excluding any repairs and maintenance which are the responsibility of Tenant pursuant to Section 6.1.

6.3 Liens. Tenant shall keep the Demised Premises free of liens caused by Tenant or Tenant’s agents or contractors, including the failure to pay for labor or materials supplied to the Demised Premises.

ARTICLE 7 - INDEMNIFICATION & HOLD HARMLESS

7.1 Indemnification & Hold Harmless for Landlord. To the fullest extent permitted by law, Tenant shall defend, indemnify and hold harmless Landlord, its employees, officers, directors, and shareholders from and against all claims, damages, losses and expenses, including, but not limited to, attorneys’ fees, costs and expenses for bodily injury and property damage, arising out of or connected with (i) the negligent acts or omissions by, or the fault of, Tenant, its subcontractors, its employees and invited guests, or anyone employed directly or indirectly by any of them or by anyone for whose acts or omissions any of them may be liable, or (ii) Tenant’s use and occupancy of the Demised Premises or any breach or default by Tenant in performance of its obligations under this Lease; provided that such claims, demands and causes of action are not caused by the negligence, intentional act or breach of contractual duty of or by Landlord.

7.2 Allocation of Risk. Each party shall name the other as an additional insured on its policy/ies of insurance covering the Real Estate, including Demised Premises and Common Areas, as applicable. Each party shall be responsible for claims, damages, losses and expenses to the extent they result from the action or inaction of the party or its licensees, invitees, agents, employees, or officers, and the responsible party’s policy/ies of insurance shall provide the primary coverage for such claims, damages, losses and expenses.

ARTICLE 8 – INSURANCE

8.1 Required Coverage.

(a) Tenant Provided Insurance. Tenant, at its sole expense, shall maintain or cause to be maintained the following insurance:

(1) Public Liability Insurance. Comprehensive general public liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Demised Premises, or adjacent entrances, or any work, matters or things under or in connection with or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than \$1,000,000 for each accident or occurrence.

(2) Mandatory Insurance. Workers compensation and all other insurance, if any, of whatever description and in such amounts as may be required by any ordinance, law or governmental regulation to be carried or maintained by Tenant.

(b) Landlord Provided Insurance. Landlord shall maintain or cause to be maintained the following insurance:

(1) All Risk Insurance. “All risk” insurance covering all risks of physical loss or damage to the Demised Premises with liability limits of not less than the full insurable value of the same (with a reasonable allowance for depreciation). Such policy shall be

broad form and shall include, but shall not be limited to, coverage for fire, wind, and extended coverage.

(2) Public Liability Insurance. Comprehensive general public liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Demised Premises, or adjacent entrances, or any work, matters or things under or in connection with or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than \$1,000,000 for each accident or occurrence.

8.2 General Requirements. The policies of insurance to be maintained by Tenant or Landlord under the provisions of this Lease shall be issued by responsible insurance carriers of recognized responsibility, licensed to do business in the State of West Virginia, and shall provide the following:

(a) Named Insured. All policies (other than policies for workers compensation insurance) shall name as the insureds, Landlord and Tenant, as their respective interests may appear.

(b) Required Provisions. All policies shall contain: (1) the agreement of the insurer to give Landlord and Tenant at least 30 days' notice prior to cancellation of or material change in said policies, or any of them; (2) a waiver of subrogation rights against Landlord and Tenant; (3) an agreement that such policies are primary and noncontributing with any other insurance that may be carried by Landlord or Tenant, as applicable; and (4) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy.

8.3 Deductibles. Any insurance policies obtained hereunder by any Insurance Provider may contain such deductibles as such Insurance Provider, in its reasonable business judgment, may deem appropriate.

ARTICLE 9 - MORTGAGES, ASSIGNMENTS AND SUBLEASES

9.1 Permitted Transfers.

(a) Landlord shall have the right to sell, assign, transfer, encumber or hypothecate its interest in the Demised Premises or in this Lease any time it wishes to do so without the need to notify Tenant nor to obtain Tenant's permission, except for any such transfer that would create a default under this Lease.

(b) Tenant shall have the right to sell, assign, transfer, encumber or hypothecate its interest in the Demised Premises or in this Lease (collectively referred to as a "Transfer") upon receipt of the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed.

9.2 Sublease by Tenant. Tenant may not enter into subleases affecting all or any portion of the Demised Premises without written consent from Landlord; provided, however, that any tenant of the Real Estate may sublet any portion of the demised premises possessed by that

tenant to another tenant while both tenants have leases in effect, without written consent from Landlord.

ARTICLE 10 – DEFAULT AND TERMINATION PROVISIONS

10.1 Events of Default by Tenant. Each of the following events shall be deemed a default and breach of this Lease by Tenant (“Tenant Default”):

(a) The filing by Tenant of a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Tenant’s seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of Tenant’s interest in the Demised Premises or the making by Tenant of any general assignment for the benefit of creditors, or the admission in writing by Tenant of its inability to pay its debts generally as they become due;

(b) The filing of a petition against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of Tenant’s interest in the Demised Premises, unless such petition shall be dismissed within thirty (30) days after Tenant actually learns of such filing; or if the Demised Premises or Tenant’s effects or interest therein should be levied upon or attached under process against Tenant, and such levy or attachment is not satisfied or dissolved within one thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction or dissolution thereof;

(c) Tenant fails to pay any Rent or any other charges payable by Tenant hereunder within thirty (30) days of the due date.

10.2 Default Remedies. In the event of a default by Tenant that is not cured within thirty (30) days of delivery of notice of the default to Tenant by Landlord, or, if the nature of Tenant’s obligation is such that more than thirty (30) days are required for its performance, if Tenants fails to commence such performance within such thirty (30)-day period and thereafter diligently pursue the same to completion, provided such cure shall be completed within a total of ninety (90) days, Landlord shall have the following remedies:

(a) Termination. Landlord may terminate this Lease by giving Tenant a thirty (30) day written notice of termination specifying the date of termination. Termination by Landlord hereunder shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

(b) Payment of Expenses. Tenant shall pay to Landlord, on demand, such reasonable expenses as Landlord may incur, including, without limitation, court costs and reasonable attorneys’ fees and disbursements, in enforcing the performance of any obligation of defaulting party.

(c) Relet. If Landlord repossesses the Demised Premises upon any Tenant Default, then Landlord shall make commercially reasonable efforts to relet the Demised Premises for such rent and upon such terms as are acceptable to Landlord, and if a sufficient sum shall not be thus realized after paying the expense of such reletting to satisfy the rent herein reserved, then Tenant agrees to satisfy and pay any such deficiency. Further, in such event, Landlord may then or thereafter re-enter and take complete and peaceful possession of the Demised Premises, and Tenant covenants to peacefully and quietly yield up and surrender the Demised Premises to Landlord.

10.3. Landlord’s Default. Notwithstanding anything to the contrary set forth in this Lease, Landlord shall be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease if Landlord fails to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30)-day period and thereafter diligently pursues the same to completion, provided such cure shall be completed within a total of ninety (90) days. Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at law or in equity. Tenant shall further have the right to cure such default and, if such default involves the expenditure of money, Tenant shall have the right to deduct the cost thereof together with an administrative fee of ten percent (10%) from the Rent due or accruing hereunder. Any award from a court or arbitrator in favor of Tenant requiring payment by Landlord which is not paid by Landlord within the time period directed by such award, may be offset by Tenant from Rent next due and payable under this Lease. In addition to any other remedies under this Lease or at law, if Landlord fails to cure a default as set forth in this section, Tenant may terminate this Lease by giving Landlord a thirty (30) day written notice of termination specifying the date of termination. Termination by Tenant hereunder shall not relieve Landlord from the performance of any obligation under this Lease or from any claim for damages previously accrued or then accruing against Landlord.

10.4. Termination option of Tenant. In addition to any and all other rights of Tenant, Tenant shall have the opportunity to terminate the lease prior to the beginning of the Post-Revitalization Period as described in this section. Landlord shall notify Tenant at least sixty (60) days prior to the beginning of the Post-Revitalization Period, in writing, stating the proposed beginning date of the Post-Revitalization Period and offering Tenant an opportunity to inspect the Premises prior to resuming occupancy. Tenant shall have the opportunity to inspect the Premises and to evaluate the suitability of the renovations for its operational purposes and needs, considering the increased rental rate following the Pre-Revitalization Period. Within sixty (60) days of Landlord’s notice of the anticipated beginning of the Post-Revitalization Period, Tenant may exercise its option in its sole discretion to terminate the lease by providing written notice of the election and the effective date of the termination to Landlord. Tenant shall not be in breach of this Agreement nor subject to any other fee or penalty for exercising its termination right under this section. Rents, costs, and fees, if any, owed to the parties shall be prorated as of the designated termination date if Tenant elects termination of the lease under this section.

ARTICLE 11 - MISCELLANEOUS PROVISIONS

11.1 Notices. Any notice, consent, approval, demand, request or document which either party is required or desires to give or deliver to or make upon the other hereunder shall be in writing and shall be personally delivered or sent by United States registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

To Landlord: Michael Cardi, Esq.
Bowles Rice LLP
125 Granville Square, Suite 400
Morgantown, West Virginia 26501

To Tenant: The City of Morgantown
c/o Finance Director
389 Spruce Street
Morgantown, WV 26505

11.2 Brokers. Landlord and Tenant both represent and warrant that no broker or finder has been engaged by it in connection with any of the transactions contemplated by this Lease.

11.3 No Waiver. No waiver by either party hereto of any term, covenant or condition of this Lease shall be deemed to have been made unless expressed in writing and signed by such part.

11.4. Fiscal Year Funding. Performance under the agreement shall be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by Morgantown City Council or otherwise being available for this agreement. If funds are not appropriated or otherwise available for this agreement, the agreement shall terminate without penalty on the last day of the fiscal year during which the agreement was funded, or as of the date of the lapse of appropriations, whichever occurs earlier. City agrees to use its best efforts to have the amounts contemplated under the agreement appropriated for the obligations provided in the agreement. Non-appropriation or non-funding shall not be considered an event of default.

11.5. Nondiscrimination. The City requires that all parties conducting business within the City, and with which the City enters contracts, abide by its Nondiscrimination Ordinance, as codified at Article 153 of the Codified Ordinances of the City. Landlord shall not discriminate with regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familiar status, or veteran status in the performance of its duties, and Landlord shall obligate its agents, subcontractors, and all other related parties performing work or services for the City to comply with this policy and the Nondiscrimination Ordinance.

ARTICLE 12 – CASUALTY AND CONDEMNATION

12.1 Casualty.

(a) If the Premises shall be partially or totally damaged or destroyed by fire or other casualty, the Rent payable hereunder shall be abated to the extent that the Premises shall have been rendered untenable and for the period from the date of such damage or destruction to the date it is rendered tenantable. Should Tenant reoccupy a portion of the Premises during the

period any restoration work is taking place and prior to the date same is made completely tenantable, Rent allocable to such portion shall be payable by Tenant from the date of such occupancy.

(b) If the Building or the Premises shall be damaged or destroyed by fire or other casualty (whether or not the Premises are damaged or destroyed) so as to require (determined in the Landlord's reasonable discretion) an expenditure by Landlord of more than fifty percent (50%) of the full insurable value of the Building or if the Premises are completely destroyed or so badly damaged that, in Landlord's reasonable opinion, repairs to the Premises cannot be commenced within thirty (30) days or completed within one hundred eighty (180) days from the date of the damage or destruction, then in either such case, Landlord may terminate this Lease by giving Tenant written notice within thirty (30) days after the date of the casualty, specifying the date of termination of this Lease; provided that Landlord shall not terminate the Lease unless Landlord also terminates all the other leases within the Building. In such event, Tenant shall forthwith quit, surrender and vacate the premises. In the event of termination, the Rent payable hereunder shall be abated from the date of damage or destruction.

(c) If all or any portion of the Premises are damaged by fire or other casualty and if Landlord has not elected to terminate this Lease, Landlord shall, within one hundred eighty (180) days after such occurrence, repair or rebuild the Premises or such portion to its condition immediately prior to the Lease Commencement Date. Tenant may terminate this Lease by giving written notice to Landlord, if Landlord has not commenced the required repairs thirty (30) days or has not restored and/or rebuilt the Premises as herein provided within one hundred eighty (180) days from the date of such damage or destruction.

12.2. Condemnation.

(a) As used herein, the following words have the following meanings:

(i) "Taking" shall mean the deprivation of or damage to the Premises, the Building or the Real Estate or any portion thereof, as the result of the exercise by a governmental authority of any power of eminent domain, condemnation, or purchase under threat thereof.

(ii) "Taking Date" shall mean with respect to any Taking, the date on which the condemning authority shall have the right to possession of the Premises, the Building or the Real Estate or any portion thereof.

(iii) "Award" shall mean the award for, or proceeds of, any Taking, less all expenses in connection therewith, including reasonable attorneys' fees.

(b) In the event of a Taking of the whole or a substantial part of the Building, other than a Taking for a temporary use, then as of the Taking Date, this Lease shall immediately cease and terminate, and the Rent payable hereunder shall be adjusted as of the Taking Date and Tenant shall have no claim for the value of the unexpired term hereof or to any part of the Award or any claim against Landlord relating to the Taking, except as provided in Section 12.2(g) hereof.

(c) In the event of a Taking of all or any part of the Premises, either Landlord or Tenant shall have the right to terminate this Lease with written notice thereof to the other party within thirty (30) days after the condemnation acquisition. Landlord shall be entitled to the Award and Tenant shall have no claim for the value of the unexpired term of this Lease or to any part of the Award or have any claim against Landlord relating to the Taking, except as provided in Section 12.2(g) hereof.

(d) In the event of a Taking of all of the Premises or such portion thereof as shall substantially and materially impede or impair Tenant's use and occupancy of the Premises (including a material loss of access), as reasonably determined by Tenant, then Tenant shall have the right to terminate this Lease as of the Taking Date and Landlord shall be entitled to the Award and Tenant shall have no claim for the value of the unexpired term of this Lease or to any part of the Award or have any claim against Landlord relating to the Taking, except as provided in Section 12.2(g) hereof.

(e) In the event of a Taking of less than all of the Premises and neither party shall elect to terminate this Lease the Rent payable hereunder shall be reduced in proportion to the ratio that the rentable square footage of the Premises so taken bears to the total rentable square footage of the Premises prior to the Taking. Landlord shall make such repairs and alterations as may be necessary to make the part not taken usable, at Landlord's cost and expense.

(f) If there is a Taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant shall continue to comply with all the provisions hereof, except as such compliance shall be rendered impossible or impracticable by reason of such Taking. Rent shall be abated during the course of such Taking to the extent and for the period of time that the Premises, or a portion thereof, shall have been rendered untenable.

(g) All Awards shall belong to Landlord without any participation by Tenant. Tenant hereby assigns to Landlord any share of any Award which may be granted to Tenant, except Tenant shall be entitled to make a separate claim with regard to the unamortized cost of any leasehold improvements paid for by Tenant, interruption of Tenant's business, depreciation of Tenant's goods and trade fixtures, and Tenant's moving and relocation expenses, provided same does not diminish Landlord's Award. If a direct payment is not allowed by applicable local law, Landlord shall pay Tenant: (i) the portion of the Landlord's Award that is attributable to the value of Tenant's interest and business, as determined by the condemning authority; and (ii) an amount equal to the unamortized portion of any expenditures by Tenant for its improvements or Alterations to the Premises plus its moving and relocation expenses.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year first above written.

LANDLORD:

The Historic Morgantown Post Office Building, Inc.,
a West Virginia corporation

By: _____
Name: Jane S. Cardi
Its: President

TENANT:

The City of Morgantown, a West Virginia
municipality

By: _____
Name: A. Kim Haws
Its: City Manager

EXHIBIT A
TO
COMMERCIAL REAL ESTATE LEASE

Legal Description of the Real Estate

OLD POST OFFICE BUILDING, PARCEL 1:

BEGINNING at a P.K. Nail at the intersection of the western right-of-way line of High Street and the northern right-of-way line of Kirk Street; thence along Kirk Street N. 56° 40' W. 79.17 feet to an "X" in the concrete sidewalk; thence by Grantors herein and along the wall separating the Original Post Office and the Addition, N. 33° 33' E. 20.27 feet to a point; thence by the same S. 56° 40' E. 0.75 feet to a point; thence by the same 33° 33' E. 45.00 feet to a point; thence by the same N. 56° 40' W. 0.75 feet to a point; thence by the same N. 33° 33' E. 26.73 feet to a railroad spike; thence by Grantors herein S. 56° 40' E. 79.17 feet to an "X" in the concrete sidewalk the western right-of-way line of High Street; thence along High Street, S. 33° 33' W. 92.00 feet to the place of beginning, containing 7249 square feet, as more particularly shown on the plat of survey made by Fayette Engineering Company of Morgantown, West Virginia, and dated the 22nd day of May, 1976, and recorded as an Exhibit to that certain Deed recorded in Deed Book No. 776 at Page No. 250, which said map or plat is incorporated herein by reference for descriptive and all other pertinent purposes.

OLD POST OFFICE BUILDING PARCEL 2:

All of the grantors' right, title, interest and claim in and to the sidewalks on High Street and Kirk Street to the extent that the same abut Parcel A herein conveyed.

EASEMENT 1:

That certain right-of-way or easement not exceeding eight (8) feet in width adjacent to and abutting the northeast boundary of the property hereby conveyed, and also a right-of-way or easement over the area marked and designated as steps on the said plat adjacent to the rear of the property hereby conveyed for the purpose of ingress, egress and regress to and from the building, together with the right to build a pedestrian ramp on said right of way or easement first above mentioned, the design of which shall be subject to the approval of the Grantors, which approval shall not be unreasonably withheld. The elevation of the ramp shall not exceed the elevation of the existing main floor of the building hereby conveyed. The said

ramp is to be used jointly by the Grantors and the Grantee.

EASEMENT 2:

That certain right-of-way over the remainder of the tract of which this is a part for the purpose of connecting and running utility lines to the property herein conveyed.

RESERVATION 1:

There is excepted and reserved from this conveyance a right-of-way over the property hereby conveyed for the purpose of running utility lines across the same to the other property of the Grantors herein.

Being the same real estate conveyed to the Monongalia County Arts Center Association, Inc., by Deed dated June 11, 1976, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 776, Page 250, and by Quitclaim Deed dated September 23, 2006, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1331, Page 516.

ANNEX:

Part of Lots No. 30 and 31 in the Third Ward of the City of Morgantown, Monongalia County, West Virginia.

Being the same real estate conveyed to Greater Morgantown Community Trust, Inc., by Deed dated September 23, 2006, and recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1331, Page 506.

EXHIBIT B
TO
COMMERCIAL REAL ESTATE LEASE

Description of the Demised Premises

The Demised Premises are located at 107 High Street, Morgantown, West Virginia 26505, in what is commonly referred to as the “MAC Building.” During the Pre-Revitalization Period, the Demised Premises includes only the portion of the Basement of the MAC Building occupied by Tenant as of the Effective Date, with the common address of 175 Kirk Street, Morgantown, West Virginia 26505, which is approximately 3,936 square feet of commercial space, and which may be modified in space and in square footage for and during the Post-Revitalization Period.

Morgantown Parking Authority Maintenance Shop and Break Area

- Area to maintain equipment and vehicles
- Workspace with a computer
- Space to cut meter poles, grind, and weld
- Storage and Maintenance of the paint machine
- Storage for Cryotek -Used for deicing on the top of the parking garages and generally ordered by the skid of 50lb bags.
- Storage for Ventrax, Sweeper, Bobcat, and all attachments
- Storage for spare meters and parts
- Storage for small tools
- Break area with restroom

The Parking Authority has discussed building a maintenance shop several times over the years. Lou Dempsey, Dempsey Engineering provided an estimated cost of \$250,000 to \$300,000 some years ago. At the time, the Parking Authority had two yearly bond payments totaling \$740,000 per year. Those bonds have since been paid. There is one bond being paid on now for \$180,000 per year.

Currently, our maintenance department works out of four different locations, one small garage in the Wharf, one small area in the University garage, the bottom of City Hall, and out of the parking office.

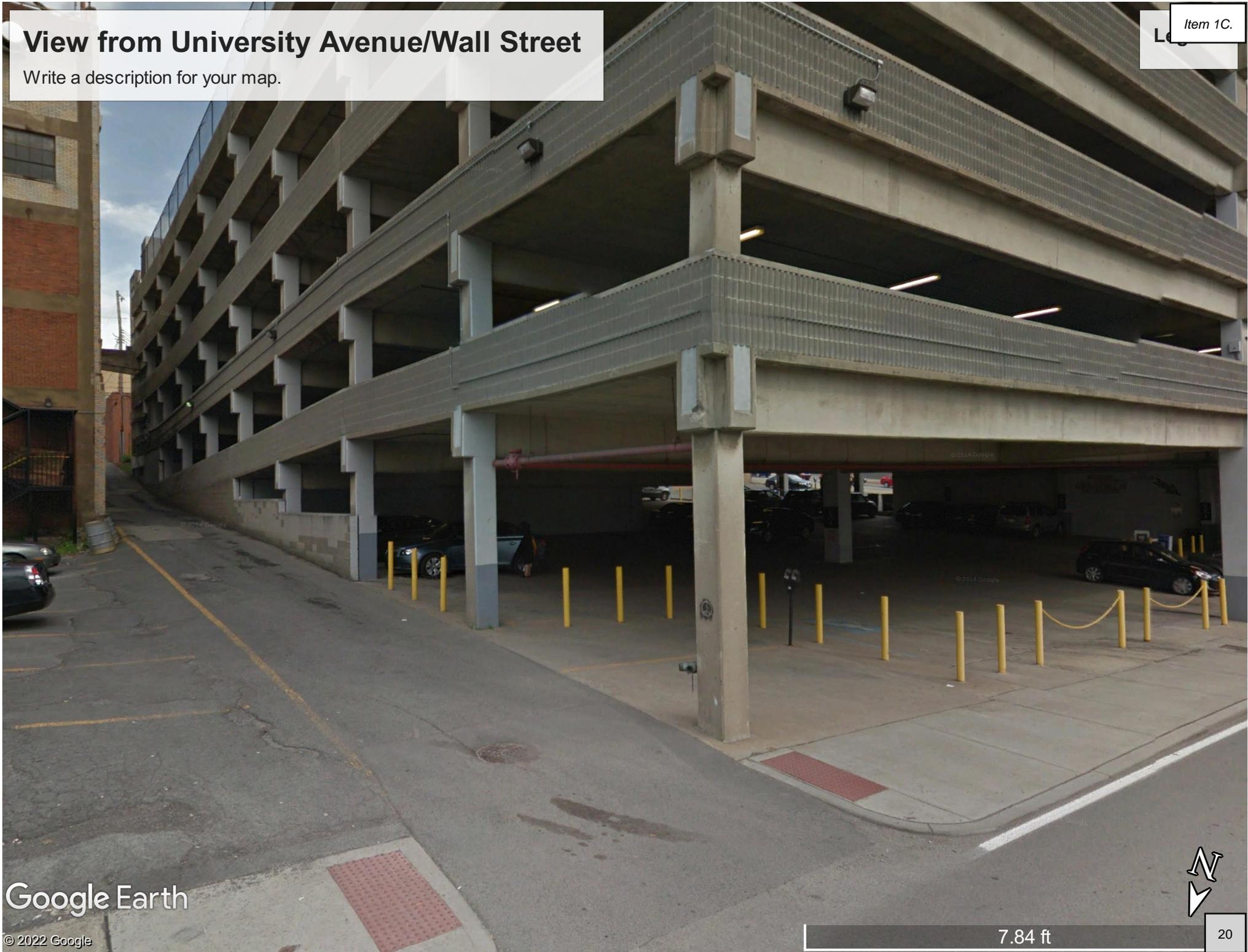
The Parking Authority has needed a maintenance shop for several years now. With the City Hall renovations taking place next year, the Parking Authority agreed that this would be a good time to explore building the maintenance shop.

The location would be the lower corner of the University Avenue parking garage (see photos).

View from University Avenue/Wall Street

Write a description for your map.

Item 1C.



Google Earth

© 2022 Google

7.84 ft



20

View from University Avenue/Wall Street

Write a description for your map.

Item 1C.



Morgantown Parking Authority Maintenance Shop and Break Area

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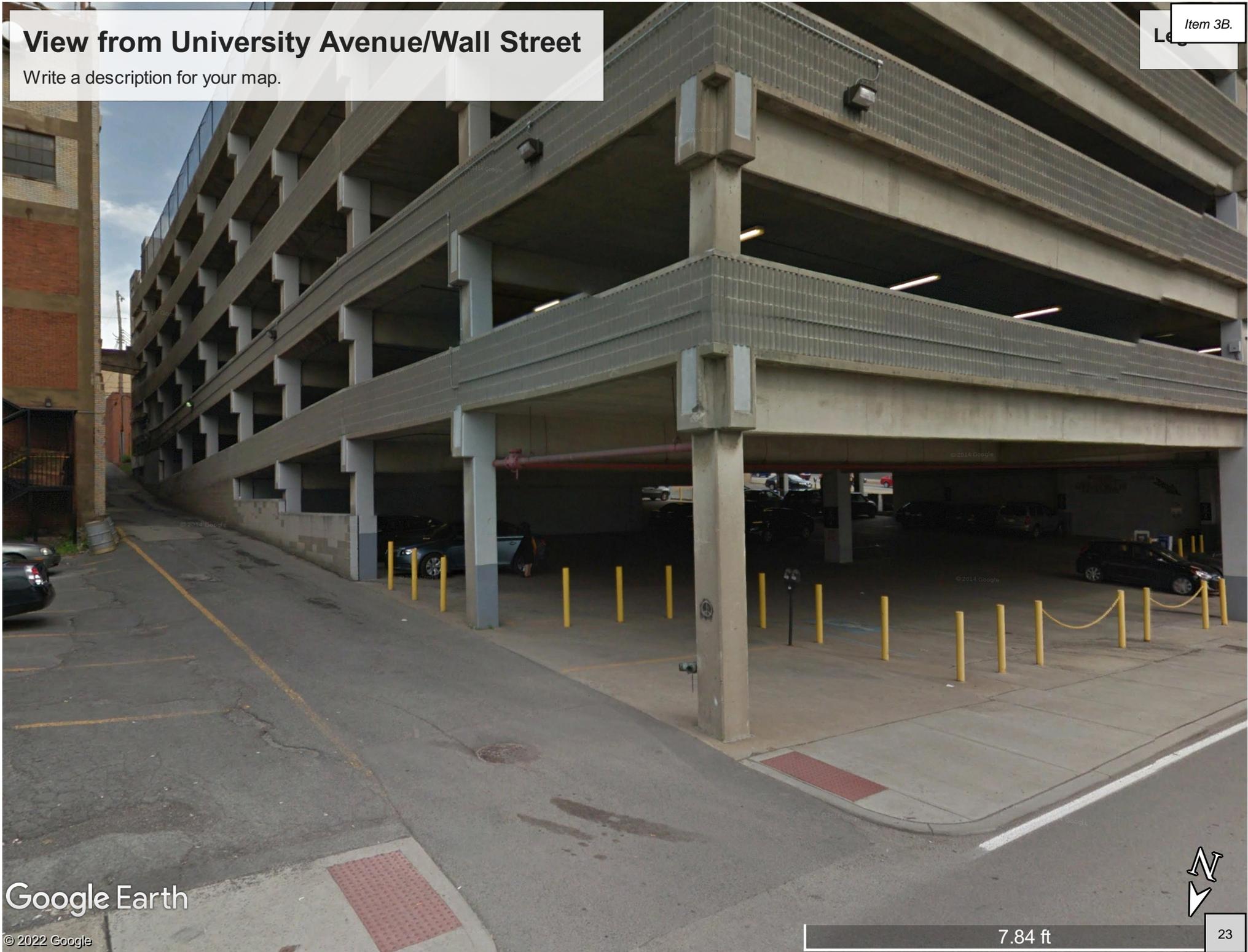
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View from University Avenue/Wall Street

Write a description for your map.

Item 3B.



Google Earth

© 2022 Google

7.84 ft

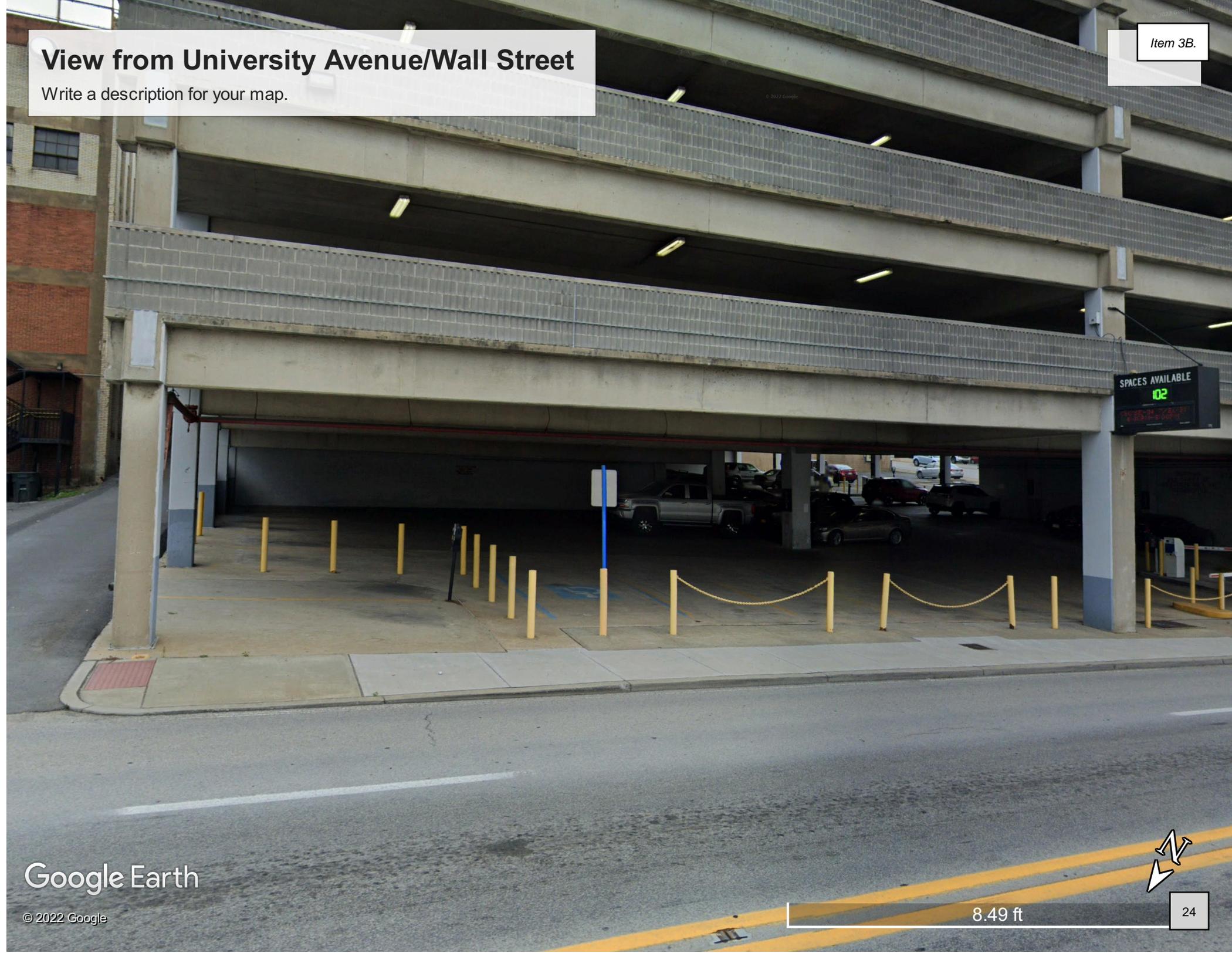


23

View from University Avenue/Wall Street

Write a description for your map.

Item 3B.



Morgantown Employees' Retirement and Benefit Fund
Rules and Regulations

1. Scope and application. These Rules and Regulations (the “**Rules**”) govern the administration of the Morgantown Employees' Retirement and Benefit Fund (the “**Fund**”) authorized by *W. Va. Code* §§ 8-22-2 through -15 (the “**Pension Act**”) and established by an ordinance enacted by Morgantown City Council on July 7, 1987, entitled “An ordinance amending an ordinance at the second reading thereof entitled ‘An ordinance amending an ordinance repealing, amending and re-enacting an ordinance adopted January 10, 1956, and likewise repealing, amending and re-enacting an ordinance adopted March 1, 1960, entitled ‘An ordinance amending an ordinance of the Council of The City of Morgantown establishing and providing for the maintenance of an employees' retirement and benefit fund in accordance with the provisions of Chapter 8, Article 15, of the Code of West Virginia, 1955, as amended.’, to effectuate the provisions of Chapter 8, Article 22, of the Code of West Virginia.” (the “**Establishing Ordinance**”). The members of the Fund, and the Board of Trustees of the Fund, shall follow these Rules in the performance of their duties with respect to the Fund. These Rules will be administered by the City Manager, and any question as to application or interpretation of the Rules will be decided by the City Manager. These Rules are adopted consistent with the authority of the City Council pursuant to *W. Va. Code* § 8-22-4 to make any and all rules and regulations pertaining to the Fund not inconsistent with the provisions of *W. Va. Code* § 8-22-2 through -15, or with the Constitution and laws of the State of West Virginia.

2. Definitions. Terms used in these Rules, unless specifically defined otherwise in the Rules, have the meanings supplied in the Pension Act and the Establishing Ordinance.

3. Appointment of the Board of Trustees. Appointments to the Board of Trustees (the “**Board**”) are made by the City Manager with the consent of a majority of the members of the Fund. When a vacancy on the Board exists or is anticipated, the City Manager will notify the members of the Fund of the nominee for the vacancy either by electronic mail to the member's work electronic mail address, by notification through an intranet or similar system to which employees have access, by posting notice in a publicly-accessible place at City Hall, or by any combination of these methods. The notice shall be dated and shall identify the nominee by name and employment position. Any member of the Fund may notify the City Manager that they do not consent to the nomination by delivering written notice to the City Clerk within seven days of the notice of nomination. The member notification must include the member's name, department, and reason for declining consent. If, after the notice period, the City Clerk has not received notice from a majority of the members of the Fund that they do not consent to the nomination, the nominee will become a member of the Board as of that date or as of the date the vacancy will occur, whichever is later.

4. Membership of the Board. Members of the Fund include employees of The City of Morgantown, Morgantown Utility Board, and Morgantown Parking Authority (“**Member Entities**”). The Board consists of four appointed positions in addition to the City Manager. No more than two employees of any one of the Member Entities may hold any of the appointed board positions at any time.

5. Conduct of Business by the Board. The Board will meet at a regular place and time each month to ensure the efficient conduct of business and timely consideration of applications for pension benefits, such place and time to be determined by the Board. The Board may meet at such

other times as determined appropriate consistent with the procedures in *W. Va. Code* § 8-22-4. The meetings of the Board will be held consistent with the West Virginia Open Governmental Proceedings Act, *W. Va. Code* § 29B-1-1 *et seq.*, and any policies of The City of Morgantown governing public meetings of the Board. A quorum for the conduct of business shall be a majority of the members of the Board then in office, and the Board may take action by majority vote of all members of the Board then in office.

6. Payment of benefits. Benefits payable from the Fund pursuant to an award authorized by the Board, or as otherwise required by law, will be delivered by the City Finance Department or payroll manager, from the account(s) they may establish for such purposes, in accordance with their established practices and procedures, which may include requiring delivery of payments by direct deposit to a recipient’s bank account, in accordance with information provided by the recipient, or by deposit to a pay card.

Adopted this ___ day of _____, 2022

The Common Council of The City of Morgantown, West Virginia

By: Jenny Selin
Its: Mayor

Attest:

Christine Wade
City Clerk