



# The City of Morgantown

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

Office of the City Clerk

## AGENDA REGULAR MEETING

July 6, 2021  
7:00 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting is not permitted. This meeting will take place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting will be broadcast live on Morgantown 15 and live streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public can also listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wish to comment on a particular issue or public hearing, they should fill out the public comment sign-up form on our website, prior to the start of the meeting which can be found at: <https://bit.ly/MCC070621>. Additionally, the public can submit written comments via email to the City Clerk at [cwade@morgantownwv.gov](mailto:cwade@morgantownwv.gov).

1. **Call to order by City Clerk:**
2. **Nominations of Mayor and Deputy Mayor:**
3. **Oath of office for Mayor and Deputy Mayor:**
4. **Oath of office for Council:**
5. **Roll Call by Mayor:**
6. **Pledge to the Flag:**
7. **Approval of Minutes:** June 1, 2021, Regular Meeting minutes; June 15, 2021, Special Meeting minutes; June 15, 2021, Regular Meeting minutes.
8. **Correspondence:**
  - A. Morgantown Police Department New Hire Oaths
9. **Public Hearings:**
  - A. An Ordinance providing for the Zoning of certain parcels of Real Estate to be annexed into the First Ward of the City of Morgantown upon final order from the Monongalia County Commission by amending article 1331 of the Planning and Zoning Code of the City of Morgantown as shown on the exhibit attached and declared to be a part of this ordinance as if the same were fully set forth within
  - B. An Ordinance authorizing a lease agreement with the Shack Neighborhood House at the former Woodburn School
  - C. An Ordinance authorizing a lease agreement with the Mountaineer Homeschoolers HUB at the former Woodburn School

**10. Unfinished Business:**

- A. *Consideration of **Approval of (Second Reading)** of An Ordinance providing for the Zoning of certain parcels of Real Estate to be annexed into the First Ward of the City of Morgantown upon final order from the Monongalia County Commission by amending article 1331 of the Planning and Zoning Code of the City of Morgantown as shown on the exhibit attached and declared to be a part of this ordinance as if the same were fully set forth within (First reading 06/01/2021)*
- B. *Consideration of **Approval of (Second Reading)** of An Ordinance authorizing a lease agreement with the Shack Neighborhood House at the former Woodburn School (First reading 6/15/2021)*
- C. *Consideration of **Approval of (Second Reading)** of An Ordinance authorizing a lease agreement with the Mountaineer Homeschoolers HUB at the former Woodburn School (First reading 06/15/2021)*

D. Boards & Commissions:

**8. Public Portion which shall be subject to rules established by council and adopted by Resolution:**

**9. Special Committee Reports:**

- A. Civilian Police Review & Advisory Board
- B. Special Committee on Unsheltered Homelessness – *Members; Councilor Selin, and Councilor Harshbarger.*

**10. Consent Agenda:** *Reminder: Matters on the Consent Agenda are voted on collectively without any debate. If any member objects, an item is removed and considered under New Business.*

**11. New Business:**

- A. *Consideration of **Approval of Decker’s Creek Rail Trail paving BID Call***
- B. *Discussion of **Conduct of future City Council meetings***
- C. *Discussion of **Filling of Vacancy for First Ward Council member***

**12. City Manager’s Report:**

**13. Report from City Clerk:**

**14. Report from City Attorney:**

**15. Report from Council Members:**

**16. Adjournment:**

**\*For accommodations, please contact us at 304-288-7072.**

**City of Morgantown**  
389 Spruce Street, Morgantown, WV 26505

**MINUTES**  
**REGULAR MEETING**  
**June 1, 2021**

The Regular Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, June 1, 2021, at 7:11 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. The meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting was broadcast live on Morgantown 15 and live streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public could listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wished to comment on a particular issue or public hearing, they were asked to complete a public comment sign-up form on our website, prior to the start of the meeting, which could be found at: <http://bit.ly/MCC060121>. Additionally, the public could submit written comments via email to the City Clerk at [cwade@morgantownwv.gov](mailto:cwade@morgantownwv.gov).

**PRESENT:** Via Webex City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, City Clerk Christine Wade, Mayor Ron Dulaney, Jr., Deputy Mayor Rachel Fetty, and Council Members Bill Kawecki, Deb Bergen, Jenny Selin, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Dulaney.

**APPROVAL OF MINUTES:** May 4, 2021, Regular Meeting; May 18, 2021, Special Meeting; May 25, 2021, Special Meeting; and May 25, 2021, Committee of the Whole Meeting minutes were approved by consensus as printed. Motion carried 7-0.

**CORRESPONDENCE:** Mayor Dulaney proclaimed June as LGBTQ+ Pride Month recognizing the achievements of the community and reaffirming the City's commitment to being an inclusive and welcoming community. Ash Orr, Human Rights Commission Chair was present to receive the proclamation.

**PUBLIC HEARING: AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET (Revision 07) ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND**

Mayor Dulaney declared this Public Hearing open.

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

**PUBLIC HEARING: AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET (Revision 02) ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND**

Mayor Dulaney declared this Public Hearing open.

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET GENERAL FUND:** The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET (Revision 07) ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND

# City of Morgantown

City Manager Kim Haws explained. Motion by Councilor Kawecki, second by Councilor Selin, to approve the above-entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET COAL SEVERANCE FUND:** The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING THE FY 2020-2021 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET (Revision 02) ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND

City Manager Kim Haws explained. Motion by Councilor Selin, second by Councilor Kawecki, to approve the above-entitled Ordinance. Motion carried 7-0.

## **BOARDS & COMMISSIONS:**

Motion by Harshbarger, second by Councilor Kawecki, to appoint by consensus, Tony Tarantini to the Traffic Commission as the 2<sup>nd</sup> Ward representative.

Motion by Councilor Bergen, second by Councilor Wendell, to reappoint by consensus, Sue Carpenter to the Library Board for another term.

## **PUBLIC PORTION:**

Mayor Dulaney declared the Public Portion open.

Jerry Carr spoke in favor of the Resolution supporting the passage of the "For the People Act".

There being no other individuals to speak, Mayor Dulaney declared the public portion closed.

## **SPECIAL COMMITTEE REPORTS:**

**Civilian Police Review & Advisory Board** – Deputy Mayor Fetty, Chair; Mayor Dulaney, Vice-Chair. Deputy Mayor shared that she hopes council can keep the board in place until members are appointed.

**Special Committee on Unsheltered Homelessness** – Mayor Dulaney shared that the next meeting will be June 10, 2021, at 2:00 pm.

## **CONSENT AGENDA:**

### **NEW BUSINESS:**

**AN ORDINANCE TO APPROVE PERSONNEL RULES:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE TO APPROVE PERSONNEL RULES

City Manager Kim Haws explained. After discussion, motion by Councilor Selin, second by Deputy Mayor Fetty, to approve the above-entitled Ordinance to second reading. Motion 7-0.

**AN ORDINANCE PROVIDING FOR CERTAIN PARCELS OF REAL ESTATE TO BE ANNEXED INTO THE FIRST WARD:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE PROVIDING FOR THE ZONING OF CERTAIN PARCELS OF REAL ESTATE TO BE ANNEXED INTO THE FIRST WARD OF THE CITY OF MORGANTOWN UPON FINAL ORDER FROM THE MONONGALIA COUNTY COMMISSION BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN

# City of Morgantown

City Manager Kim Haws explained. Rickie Yeager Director of Development Services explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Selin, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

**A RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE FY 2021 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ACTION PLAN:** The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. Motion by Councilor Harshbarger, second by Councilor Selin, to approve the above-entitled Resolution. Motion carried 7-0.

**A RESOLUTION SUPPORTING THE PASSAGE OF THE “FOR THE PEOPLE ACT” H.R. 1, S.1:** The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. After discussion, motion by Councilor Wendell, second by Councilor Kawecki, to approve the above-entitled Resolution. Motion carried 7-0.

**A RESOLUTION DISSOLVING SPECIAL COMMITTEE ON COMMUNITY POLICING:** The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. After discussion, motion by Councilor Kawecki, second by Councilor Harshbarger, to approve the above-entitled Resolution. Motion failed 7-0.

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH PAUL KOOTNZ AS XEROX SALES REPRESENTATIVE CONSULTANT AT THE AIRPORT:** The below-entitled Ordinance was presented for first reading.

City Manager Kim Haws explained. Motion by Councilor Kawecki, second by Deputy Mayor Fetty, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

**CITY MANAGER’S REPORT:** shared regarding the American Recovery Act and the stimulus grant dollars that are going to be made available to municipalities and counties throughout the country, that we still have not received any definitive criteria for what will be accepted and what will not. He has communicated with each council member and has received input from a variety of community groups and commissions. He is keeping documentation of the communication and asks that any community member who has thoughts or ideas regarding how these monies can be spent to call his office. He also reminded that city council will make the final approval as to where those dollars are going to be spent and that he will submit a recommendation to city council. Several staff were involved in interviews today with the professional consultants who are providing plans as to how we might go about improving the Marilla pool. He shared that it is his job to give recommendations to council and add any information that he can, stating that it is his intention to carry out and put in progress any policy that this Council or any Council presents and process.

**REPORT FROM CITY CLERK:** shared the need for Morgantown Police Officers and that the next test is Saturday, June 19, 2021. Applications can be received electronically or in person by June 14. Please reach out to the Clerk’s office for specific information to apply. She stated that we could spread the word by social media to our family and friends as social media seems to be a good way to share information. Information regarding requirements is listed on our website at [www.morgantownwv.gov/jobs](http://www.morgantownwv.gov/jobs).

**REPORT FROM CITY ATTORNEY:** stated that the city has a new applicant for cable service. Atlantic Broadband has applied for a cable franchise from the city. The application is complete and has provided all the information required. There is a 120-day period from the time the completed application is submitted to the time that the city will hold a public hearing on this application, and then determine whether to issue a franchise agreement. He attended the Land Reuse Agency meeting last Thursday. They have now over two consecutive meetings met in person and are also offering the public the opportunity to participate by electronic means to continue to protect public health. The Land Reduce Agencies in the context of a proposed Home Rule Plan Amendment have a particular requirement, they are enabling legislation that they must meet in person to establish a quorum and conduct business. At the meeting last Thursday, they reviewed the renewed authority for these agencies to purchase tax delinquent properties, including by exercising, a right of first refusal to purchase certain categories of those properties that are assessed for less than fifty thousand dollars value that have been on a vacant structure’s registry for a couple years that are condemned. There is a request for guidance from City Council on how the Agency can best meet their goals.

# City of Morgantown

## REPORT FROM COUNCIL MEMBERS:

**DEPUTY MAYOR FETTY:** thanked everyone for all the work that has been done on the Special Committee. She appreciates the efforts of the administration and the city clerk, and everyone involved in all the work of the special committees, sharing that our committees and boards provide thousands of hours of external valuable volunteer time and thought and energy. She acknowledged that she only has one meeting left as a city councilor and stated that each time council comes together, she is overwhelmed by how lucky she has been to work with all of them. She has heard complaining about efforts of city councilors to recruit applicants to the police pool with the idea that somehow council cannot be in favor of Police Department recruiting while simultaneously advocating for the development of a Civilian Review and Advisory Board. She clarified that we are lucky to have the Police Department that we have. She stated that we do live in a changing economy and many young folks are possibly trying to make more money per hour than we pay. She hopes that our salary review efforts in the city will help provide some guidance about how to proceed to maybe become more competitive in terms of the pay that we offer. She asked if we could potentially consider waiving the examination to make it more appealing for folks to apply to be a part of the MPD and see if we can look at offering other incentives. She encouraged everyone to take advantage of the wonderful opportunity that they have and get vaccinated.

**COUNCILOR KAWECKI:** reminded everyone that what they have seen demonstrated and that he has stated many times is the value of our volunteer boards and commissions. They are not without problems and are not without work to maintain them either from both council and administration's point of view, however, they offer a service and the participation in the city that is extremely valuable. He encouraged people to come and find something here that they think would be advantageous in terms of participating and participate in the city. You can find those opportunities on our website at [www.morgantownwv.gov](http://www.morgantownwv.gov). When you arrive on the homepage, scroll down to Quick Links, then to Volunteer for a Board or Commission. They are and, in the past, have been very popular, but are now coming vacant. We do have places on BOPARC and the Arts and Culture Commission, two very interesting places that would really benefit from participation, as would all the boards and commissions. They are all very valuable to the city and they do demonstrate the commitment this community has to making a better community.

**COUNCILOR BERGEN:** shared that it is a bit quieter in Third Ward with the rowdy youngsters having mostly left town, but they are continuing to welcome new families moving in. They are also dealing with a wave of cancer diagnosis in the last few weeks. She stated that the common factor may be that many of us avoided getting routine medical tests in the last year or avoided follow-ups. Our thoughts and prayers are with those who are entering cancer treatment and their supporters, and also an extra nudge of encouragement to take advantage of what modern medicine can offer to increase your chances of enjoying the city for a longer time.

**COUNCILOR SELIN:** shared that BOPARC has its sounds of summer series coming up and there is one concert coming up that we should pay attention to because it has both humor and music, and we need both. The concert is June 8 in the upper pavilion at Krepps Park at 6:30 pm with Joe Zimmerman and Demille. She stated that her neighborhood association has not been as active as it had been, and that folks have been asking about particular things. There is gravel on the boulevard between the Arboretum and the Auto Parts stores and people use their bikes going up and down the boulevard. She is unsure as to who is responsible for the gravel cleanup but asks if it can be taken care of or advise who can do so. Also, the helicopters go back and forth to the hospital to their pad on the other side of the highway, and they often fly a bit low and through neighborhoods. We value the life-saving helicopters then that bring people into the hospital, but if it could travel over the city campus or over the boulevard that would be great. Lastly regarding curbs and sidewalks, she would like to talk to the manager about the city's position on curbs and having some roads be concrete because they hold up well. Some folks are concerned about their concrete curbs and some concrete streets and how we can have a policy or ability to maintain some of those where they are appropriate.

**COUNCILOR HARSHBARGER:** shared that he has greatly enjoyed working with all the outgoing councilors, and that we will certainly miss them. With the new CDC guidelines that if you are fully vaccinated that you do not have to mask, strange experiences going shopping and not wearing a mask for the first time. He encouraged people to please get their vaccinations, sharing that it is nice to have our world open back up and be able to gather again.

**COUNCILOR WENDELL:** provided the following report.

"I was sad to find out last week that Angela Cline, who was our Assistant City Manager before being diagnosed with ALS, which she battled for nearly three years, has died. She was 37. Condolences to her husband Scott and their young son.

Last week, I visited New River Gorge National Park in Fayette County. While I am not physically able to do whitewater rafting or difficult hiking, I did walk the 128 steps to the platform to view the bridge. It's spectacular, and I recommend it as a day trip or an overnight stay.

# City of Morgantown

I'm concerned about the 11.2 million dollars that are to come to Morgantown through ARPA, the American Rescue Plan Act. I received an email today from the National League of Cities stating that some Senators want to take back some of that money in lieu of taxing corporations and the very wealthy to pay for infrastructure, as proposed by President Biden. This is unacceptable. J.B. McCuskey, the West Virginia State Auditor, stated to Council at a previous meeting that all proposals for spending that money have to go through his office. That's not anywhere in the legislation. He proposed we pool our grant with others and spend it outside our city. I say "No way." I've been emailing with the West Virginia Center on Budget and Policy and I've looked at the Final Interim Guidelines from Treasury. This money needs to be used for projects that will help people who were harmed by the COVID-19 pandemic. Some examples of possible use of funds include: "rent and utility relief, grants to small businesses and non-profits impacted by the pandemic, cash payments to displaced workers or households with very low incomes, Legal Aid programs to help households avoid eviction."

Betty Rivard writes a column for the *Charleston Gazette-Mail*. She wrote on May 23 that municipalities should hold public hearings to help determine where these funds can best be used. I hope that our city will follow the guidelines, and ignore those who wish to take this money away from our city, away from its purpose. I'm glad that City Manager Haws is open to ideas from the public.

The *Dominion-Post* retracted its May 23 editorial accusing City Council of deliberately withholding from the electors that Patrick Hathaway was moving to Illinois and thus would be unable to fill the First Ward Council seat. We didn't know until fifteen days after the election. I'm glad they cleared that up. Still, I'm disturbed by the snarky tone of the editorial. The editorial states "We know we're essentially talking to a brick wall: Council will do whatever it wants to do." I believe the Council I have served on the last four years has been receptive to the public's wishes in many ways, and I have faith that the new Council will continue that. We haven't always listened to the *Dominion-Post*, or the radio show hosts, who don't necessarily live in the City of Morgantown and are beholden to advertisers and a corporate overlord, whose interests may not match those of our residents and voters. Council is not beholden to advertisers. A further apology to our Council is needed.

Republicans in the Senate do not wish to pass S 1, which would make voting easier and encourage voters to come out. Instead, in Republican-controlled states, including this one, efforts have been made to keep minorities and others, especially in big cities, away from the polls. If these rules are allowed to stand, it means the United States is not the democracy we thought it was. I'm glad our city supports voting rights.

Finally, June is LGBT Pride Month. I'm proud of our voters, who elected me twice as the first openly gay Councilor to serve our city. We are an open and diverse city, and I'm proud to live here and serve my city."

**MAYOR DULANEY:** stated that he learned late last week about Angela Klein and acknowledged her passing and her service to the city, and our care and concern for her family. She will be tremendously missed by folks who knew her and especially those who knew her.

**EXECUTIVE SESSION:** Pursuant to West Virginia State Code Section 6-9A-4(b)(12) to discuss potential or pending litigation. Motion by Councilor Selin, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: Interim City Manager, City Attorney, and City Council. Time: 8:55 p.m.

**ADJOURNMENT:** There being no further business, motion by Councilor Wendell, second by Councilor Selin, to adjourn the meeting. Time: 9:07 p.m.

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City Clerk

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Mayor

# City of Morgantown

## SPECIAL MEETING

June 15, 2021

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, June 15, 2021, at 6:01 p.m. To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. This meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477, or by calling 415-655-0001 and using the access code 793 734 477.

**PRESENT:** Via Webex Mayor Ron Dulaney, Deputy Mayor Rachel Fetty, Council Members Bill Kawecki, Jenny Selin, Dave Harshbarger, and Barry Wendell. Deb Bergen was absent.

The meeting was called to order by Mayor Dulaney.

**EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Harshbarger, second by Councilor Kawecki, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:03 p.m.

6:00 p.m. – Jena Martin – Human Rights Commission  
6:20 p.m. – Mark Downs - Cultural Arts Commission  
6:40 p.m. – Don Spencer – Human Rights Commission

### **ADJOURNMENT:**

There being no further business, motion by Councilor Kawecki, second by Councilor Harshbarger, to adjourn the meeting. Time: 7:17 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

**City of Morgantown**  
389 Spruce Street, Morgantown, WV 26505

**MINUTES**  
**REGULAR MEETING**  
**June 15, 2021**

The Regular Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, June 15, 2021, at 7:29 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not permitted. The meeting took place via WebEx at <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown> using the meeting number 793 734 477. The meeting was broadcast live on Morgantown 15 and live streamed via the City of Morgantown website at <https://morgantownwv.viebit.com/>. The public could listen live by calling 415-655-0001 and using the access code 793 734 477. If members of the public wished to comment on a particular issue or public hearing, they were asked to complete a public comment sign-up form on our website, prior to the start of the meeting, which could be found at: <http://bit.ly/MCC061521>. Additionally, the public could submit written comments via email to the City Clerk at [cwade@morgantownwv.gov](mailto:cwade@morgantownwv.gov).

**PRESENT:** Via Webex City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, City Clerk Christine Wade, Mayor Ron Dulaney, Jr., Deputy Mayor Rachel Fetty, and Council Members Bill Kawecki, Deb Bergen, Jenny Selin, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Dulaney.

**APPROVAL OF MINUTES:** May 18, 2021, Regular Meeting; June 1, 2021, Special Meeting minutes were approved by consensus as printed. Motion carried 7-0.

**CORRESPONDENCE:** Mayor Dulaney recognized Deputy Mayor Rachel Fetty, Councilor Deb Bergen, Councilor Barry Wendell, and former Councilor Zack Cruze for their service to the citizens of the City of Morgantown by Proclamation. Deputy Mayor Fetty recognized Mayor Dulaney for his service to the citizens of the City of Morgantown by Proclamation. The meeting held on this day, served as their final council meeting.

**PUBLIC HEARING: AN ORDINANCE TO APPROVE PERSONNEL RULES**

Mayor Dulaney declared this Public Hearing open.

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

**PUBLIC HEARING: AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH PAUL KOONTZ AS XEROX SALES REPRESENTATIVE CONSULTANT AT THE AIRPORT**

Mayor Dulaney declared this Public Hearing open.

There being no appearances, Mayor Dulaney declared the Public Hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE TO APPROVE PERSONNEL RULES:** The below entitled Ordinance was presented for second reading.

**AN ORDINANCE TO APPROVE PERSONNEL RULES**

City Manager Kim Haws explained. After discussion, motion by Councilor Selin, second by Deputy Mayor Fetty, to approve the above-entitled Ordinance. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT:** The below entitled Ordinance was presented for second reading.

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## AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH PAUL KOONTZ AS XEROX SALES REPRESENTATIVE CONSULTANT AT THE AIRPORT

City Manager Kim Haws explained. Motion by Councilor Kawecki, second by Councilor Harshbarger, to approve the above-entitled Ordinance. Motion carried 7-0.

### **BOARDS & COMMISSIONS:**

Motion by Councilor Bergen, second by Councilor Selin, to reappoint, by consensus, Jena Martin to the Human Rights Commission for another term.

Motion by Councilor Wendell, second by Deputy Mayor Fetty, to reappoint, by consensus, Don Spencer to the Human Rights Commission for another term.

Motion by Councilor Harshbarger, second by Councilor Kawecki, to appoint, by consensus, Mark McCoy to the Cultural Arts Commission.

Motion by Councilor Kawecki, second by Councilor Harshbarger, to appoint, by consensus, Mark Downs to the Cultural Arts Commission.

Motion by Deputy Mayor Fetty, second by Councilor Selin, to appoint, by consensus, Joshua Williamson to the Cultural Arts Commission.

Motion by Councilor Selin, second by Councilor Kawecki, to appoint, by consensus, Nikki Bowman-Mills to the Cultural Arts Commission.

Motion by Councilor Wendell, second by Councilor Bergen, to appoint, by consensus, Deborah West to the Cultural Arts Commission.

### **PUBLIC PORTION:**

Mayor Dulaney declared the Public Portion open.

Danielle Trumble, 1141 Charles Avenue, thanked the outgoing council members. She spoke in favor of the Mountaineer Homeschoolers HUB at Woodburn School. She shared that she is ready to get back to in-person with city council meetings.

Angela Channell spoke in favor of the Mountaineer Homeschoolers HUB lease at Woodburn School and provided a brief overview of what they do.

There being no other individuals to speak, Mayor Dulaney declared the public portion closed.

### **SPECIAL COMMITTEE REPORTS:**

**Civilian Police Review & Advisory Board** – Deputy Mayor Fetty, Chair; Mayor Dulaney, Vice-Chair. Deputy Mayor shared that once the new council starts a board will be established upon interviews.

**Special Committee on Unsheltered Homelessness** – Mayor Dulaney shared that the next meeting will be June 17, 2021, at 2:00 pm.

### **CONSENT AGENDA: None**

### **NEW BUSINESS:**

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE TO AUTHORIZING A LEASE AGREEMENT WITH THE SHACK NEIGHBORHOOD HOUSE AT THE FORMER WOODBURN SCHOOL

Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor

# City of Morgantown

Harshbarger, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH THE MOUNTAINEER HOMESCHOOLERS HUB AT THE FORMER WOODBURN SCHOOL

Assistant City Manager Emily Muzzarelli explained. City Manager Kim Haws explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Harshbarger, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING SECTION 1331.08:** The below entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING SECTION 1331.08 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT RELATES TO A POOLHOUSE AND SWIMMING POOL BEING ONE ACCESSORY STRUCTURE

City Manager Kim Haws explained. After discussion, motion by Deputy Mayor Fetty, second by Councilor Kawecki, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

**A RESOLUTION AUTHORIZING CERTAIN INDIVIDUALS OF THE CITY OF MORGANTOWN TO TRANSACT BUSINESS WITH THE CITY'S VARIOUS BANKING AND BROKERAGE INSTITUTIONS:** The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. Motion by Councilor Kawecki, second by Councilor Harshbarger, to approve the above-entitled Resolution. Motion carried 7-0.

**A RESOLUTION APPROVING THE FY 2020-2021 BUDGET REVISION #2 FOR THE MORGANTOWN CAPITAL ESCROW FUND:** The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. After discussion, motion by Councilor Selin, second by Councilor Kawecki, to approve the above-entitled Resolution. Motion carried 7-0.

**A RESOLUTION APPROVING THE FY 2021-2022 BUDGET FOR THE MORGANTOWN MUNICIPAL AIRPORT AND THE AIRPORT IMPROVEMENT FUND:** The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. Director of the Morgantown Municipal Airport Jon Vrael explained. After discussion, motion by Councilor Selin, second by Councilor Kawecki, to approve the above-entitled Resolution. Motion carried 7-0.

**A FAIRS & FESTIVAL PERMIT FOR A JOHN LENNON TRIBUTE CONCERT AND FUNDRAISER FOR EMPTY BOWLS AT GENES BEER GARDEN:** The above-entitled permit was presented for approval.

Motion by Councilor Kawecki, second by Councilor Harshbarger, to approve the above-entitled permit. Motion carried 7-0.

**STREET PAVING PROJECT BID CALL 2021-13:** The above-entitled BID Call was presented for approval.

City Manager explained. Motion by Councilor Selin, second by Councilor Harshbarger, to approve the above-entitled BID Call 2021-13. Motion carried 7-0.

**CITY MANAGER'S REPORT:** provided a brief update on the new incoming City Council Orientation and that it will take place at a date and time to be decided after the first meeting in July. He spoke about the flooding that happened over the weekend and stated that the Engineering Department has begun the assessment of the damage that it caused. He addressed and announced the new Finance Director Kevin Tennant. Kevin Tennant introduced himself and provided a brief overview of his background.

**REPORT FROM CITY CLERK:** City Clerk Wade thanked the 2019 – 2021 city council members for bringing energy and excitement for the parks, swimming pools, trails, and the wonderful area events. She thanked those for asking why and being the only ones to vote no when they felt they should. She thanked them for voting a strong and confident yes when they knew the impact would

# City of Morgantown

be significant. She thanked them for their courage to share who they really are and setting an example to many that it is ok to be you. She thanked council for welcoming everyone into our city. She stated, “With great unselfishness and public consciousness, thank you for your sacrifice and nights away from your families to help the residents of our city that really need you.” Lastly, she thanked council for their exceptional public service and their commitment to serving the city and the citizens of Morgantown.

**REPORT FROM CITY ATTORNEY:** City Attorney Simonton thanked council for the opportunity to work with them and being so thoughtful, attentive, and engaged as they all have served, and it has been an honor. He is looking forward to working with those council members who will be returning for the new term.

## **REPORT FROM COUNCIL MEMBERS:**

**DEPUTY MAYOR FETTY:** shared that she has been overwhelmed with gratitude to be able to get back to normal. She thanked all the council members, everyone she has worked with, and those that are currently working with the city.

**COUNCILOR KAWECKI:** stated that the South Park Neighborhood Association will be holding their annual super sale in August, and the block party will be held in September. He thanked those that prepared the proclamations as they were well written. He thanked everyone for all the work that has been done and is very appreciative.

**COUNCILOR BERGEN:** spoke regarding the pandemic and shared her concern with the number of vaccines received by those affiliated with WVU. The next Wiles Hill Neighborhood Association meeting will be June 16, 2021. She thanked everyone for all the information given to her as she finishes out Zack Cruzes’ term and those that she has worked close with the last few months of the term.

**COUNCILOR SELIN:** she mentioned to the members that will not be returning to council for the next term, that if they are still interested in being on any of the boards and commissions they see fit, she would love to work alongside them. She mentioned that she is ready to get back to in-person meetings and working with the new council. Her family went through the neighborhood after the flooding over the weekend to see all the damage and saw Morgantown City Code Enforcement, and the Morgantown Fire Department helping those who had damage to their property.

**COUNCILOR HARSHBARGER:** he expressed that it has been a privilege working with everyone and he will miss those that will not be returning for a new term and is looking forward to working with the new incoming council members. He hopes that the outgoing council will continue to be involved in some capacity in the community. He mentioned the flooding that occurred over the weekend and what happens when you get that amount of rain, the city should investigate a Storm Water Management Plan.

**COUNCILOR WENDELL:** provided the following report.

“Alan Donaldson, my neighbor on Heritage Place, died Thursday at the age of 91. He was an Emeritus Professor of Geography at WVU and was head of the Wards and Boundaries Commission for many years, remaining on the Board until 2019. My condolences to his wife Ruth and their children and grandchildren.

Council has been like college. I was excited to get in, then shocked at how much work it was. It became my identity, but by the last year, I couldn’t wait for it to be over. It was a big deal to me that I was the first gay man elected to public office in Morgantown-twice, but maybe in this city it wasn’t that big a deal, and people will see that being gay or just having an outsider’s perspective is not a barrier to elected office.

This year has been hard for everyone because of the pandemic. I don’t have another job or children at home. It was stressful enough for me; I can’t imagine how those with jobs and children coped.

We’ve accomplished a lot in the last four years, and changed Morgantown’s story for all time. We passed an ordinance to protect LGBT people from discrimination, and signed on to the Paris Climate Accords. We accepted a study from a WVU graduate student to save energy just by changing light bulbs and thermostats and we’ve worked to change Morgantown’s street lighting to be more energy-efficient. We passed the Crown Act, to protect against discrimination because of hair styles. Rachel Fetty chaired a committee to form a plan for a Civilian Police Review Commission, and we passed it. We have worked to help the unhoused in our city, finding housing and help in a humane plan from then- Acting City Manager Emily Muzzarelli.

We insisted that all city employees be paid at least fifteen dollars per hour, and we need to continue that. Our city employees have been great in caring for Morgantown. Chief Caravazos came to us and asked us to accept a grant from the United States government to hire fifteen more firefighters. When the grant ran out after three years, we insisted on maintaining those positions, without raising the city’s user fee. Retired Morgantown police officers came to us when the state reduced their pensions because of a possible accounting error, and we agreed to make up the difference.

There are new visible things in the city. Each of us has small and large things we’ve worked on, sometimes quietly. I’m on the Urban

# City of Morgantown

Landscape Commission, and I went to them as soon as I saw that the consultant's plan for Hazel Ruby McQuain Park, called for tearing out all the cherry trees. The Urban Landscape Commission and the Tree board presented an alternate plan, and insisted that most of the cherry trees be maintained. We have bike lanes and "sharrows" and signs saying bicycles have the right to use the entire lane. There is a sidewalk on 8th Street, a pirate ship in the kiddie pool at Krepps Park and a new playground.

I used to scoff at the signs that said "Building an Inclusive Community" and "Bike-Friendly City." Now I'm proud that all of us have tried to make that vision real.

I have some regrets and resentments. I've felt at times that my concerns were not taken seriously on Council, that my subcultures, Jewish, Queer and Bicoastal, were not understood. I wish we had been more bold, less afraid to challenge the power structures that exist outside of city government. I wish we would have stood up for Mark Brazaitas; I wish we had pushed to make Haymaker Forest a park for all of our area residents.

I hope the next Council insists that only the Council has the right to allocate the American Rescue Plan's money designated for the city, that they not be bullied by anyone, whether in Charleston, in the county or in city management. There should be open meetings to discuss where those funds will go. I suggest first that they pay the extended unemployment benefits to city residents being cut off early by our Governor, then, if we can, build sidewalks and playgrounds in the city, and small parks where there is land available.

We've just been through a "hundred-year" storm which flooded many homes in Suncrest. I grew up near Gwynns Falls in Baltimore County, Maryland, and after the third "hundred-year" flood in ten years, the county took action to mitigate the effects of these events. We need to work with MUB to strengthen our roads and drainage systems. I was glad to see a Public Works truck in my neighborhood this morning cleaning up debris in the streets from the storm.

I want to thank the current Council for being honest politicians. Whether we agreed or not, I never felt that anyone was corrupted by outside influences. Each of us did what we thought was best for Morgantown.

I wouldn't have traded the experience of being on City Council for anything. I plan to pull back but I suspect I won't be able to do that."

**MAYOR DULANEY:** thanked everyone and all his colleagues of past and present of what has been accomplished. He mentioned all the accomplishments during his term on council. He thanked all city administration and stated that it has been a privilege working with them. He is very proud of all the accomplishments made. He welcomed the new incoming council and is looking forward to working with them and seeing what they will achieve together with the city administration. He thanked council for entrusting in him to be the Mayor during his last year on council.

**EXECUTIVE SESSION:** Pursuant to West Virginia State Code Section 6-9A-4(b)(12) to discuss potential or pending litigation. There was no executive session.

**ADJOURNMENT:** There being no further business, motion by Councilor Wendell, second by Councilor Kawecki, to adjourn the meeting. Time: 9:29 p.m.

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City Clerk

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Mayor

AN ORDINANCE PROVIDING FOR THE ZONING OF CERTAIN PARCELS OF REAL ESTATE TO BE ANNEXED INTO THE FIRST WARD OF THE CITY OF MORGANTOWN UPON FINAL ORDER FROM THE MONONGALIA COUNTY COMMISSION BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN.

The property included in this ordinance is identified as Parcel 8.2, Tax Map 14, Clinton District commonly known as 20 Scott Avenue.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the proposed zoning of property to be annexed into the City of Morgantown described above is consistent with the City's 2013 Comprehensive Plan Update, in accordance with City Ordinance 2020-35 adopted by Morgantown City Council on September 15, 2020 and subject to review and approval by final order of the Monongalia County Commission per WV State Code §8-6-4.
2. That the zoning designation for Parcel 8.2, Tax Map 14, Clinton District, of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same were fully set forth herein is classified as a B-2, Service Business District.
3. That the Official Zoning Map be accordingly changed to show said zoning classifications.

This Ordinance shall be effective from the date of adoption and the Official Zoning Map shall be duly noted with the effective date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

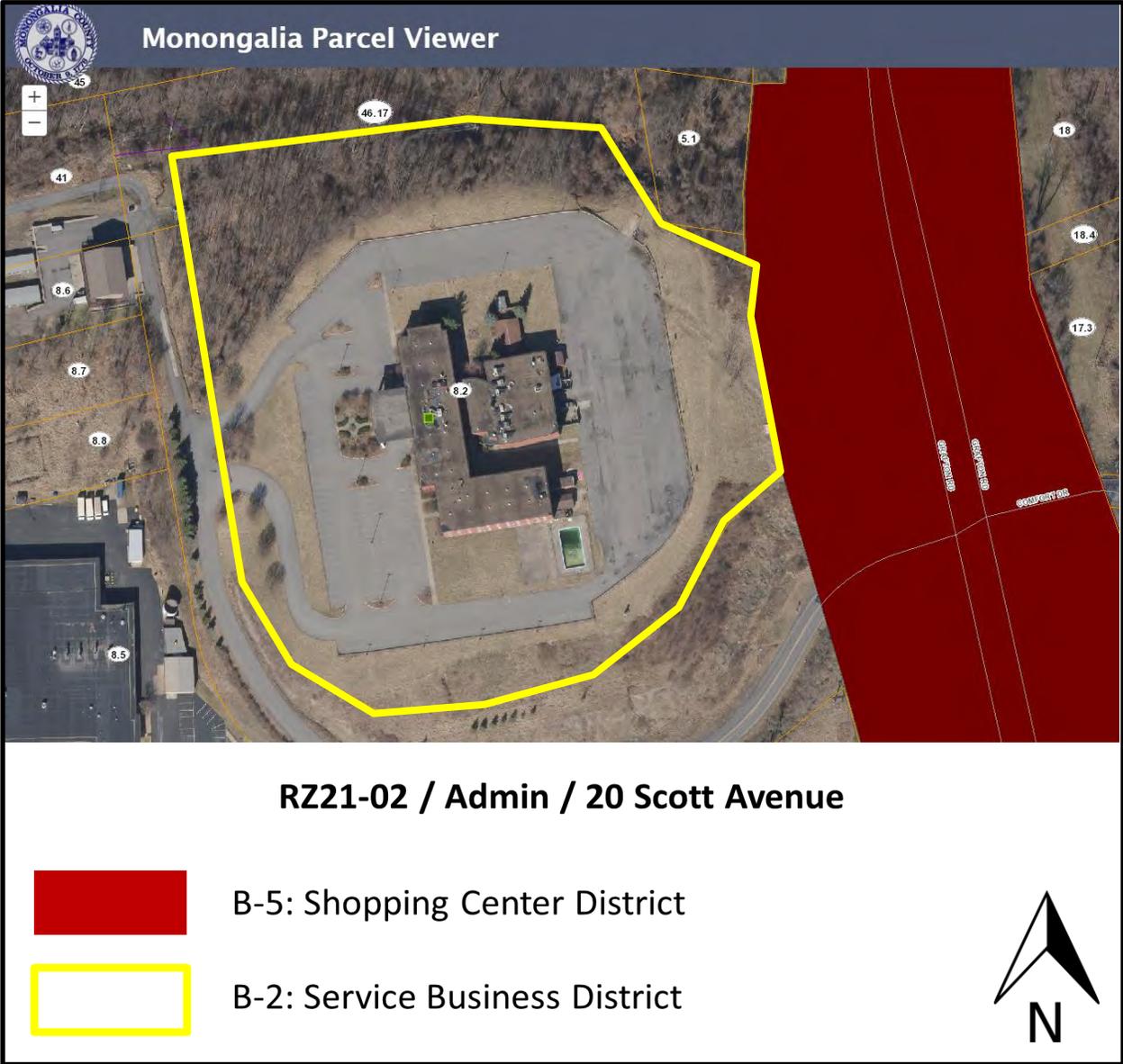
ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**EXHIBIT 1**



**AN ORDINANCE AUTHORIZING A LEASE WITH THE SHACK NEIGHBORHOOD HOUSE AT THE FORMER WOODBURN SCHOOL**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease with The Shack Neighborhood House, Inc., and to execute such additional documents and take such additional actions as are necessary and helpful to executing and implementing the terms of the lease agreement.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

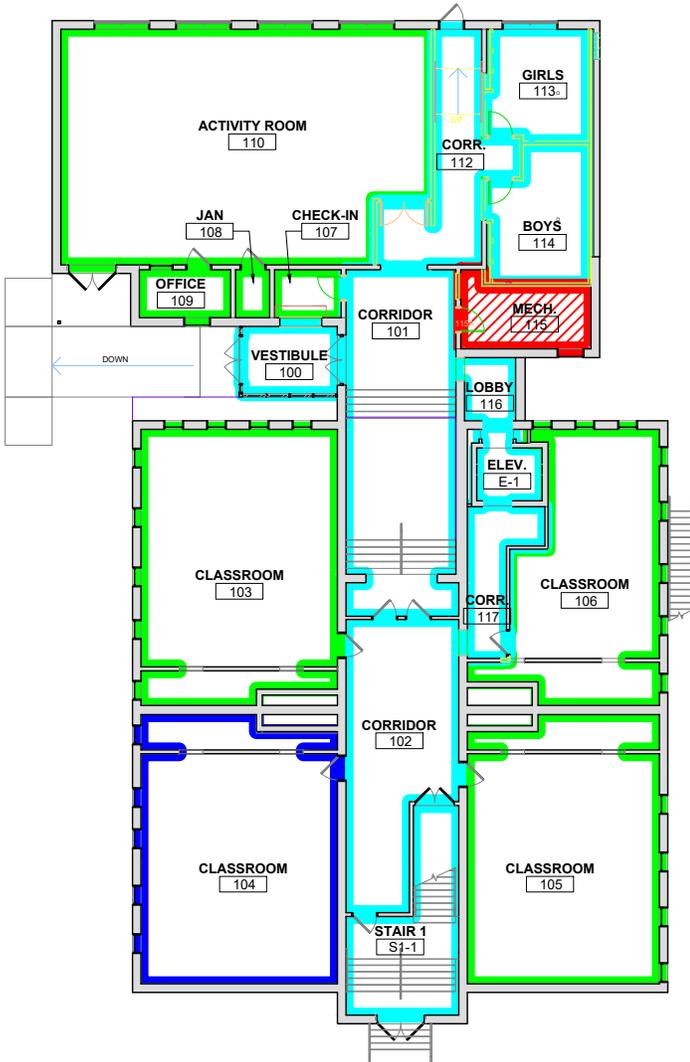
ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_

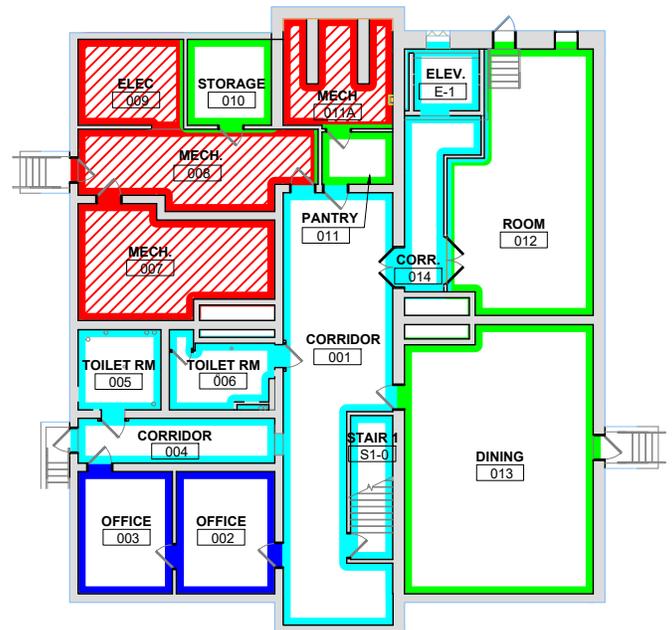
# EXHIBIT 1

## Area Leased to "The Shack"



### 1st Floor Level

Classroom	103	-	855.60	sqft
Classroom	105	-	815.90	sqft
Classroom	106	-	601.20	sqft
Check-In	107	-	51.80	sqft
Janitors	108	-	26.50	sqft
Office	109	-	71.10	sqft
Activity Room	110	-	1355.3	sqft
<b>Sub-Total</b>			<b>3,777.40</b>	<b>sqft</b>



### Basement Floor Level

Storage	010	-	117.40	sqft
Pantry	011	-	60.10	sqft
Room	012	-	556.00	sqft
Dining	013	-	802.20	sqft
<b>Sub-Total</b>			<b>1,535.70</b>	<b>sqft</b>
<b>Total</b>			<b>5,313.10</b>	<b>sqft</b>

- █ Areas Leased by The Shack
- █ Common Areas
- █ Areas Leased by Others
- █ Areas Off-Limits

## LEASE AGREEMENT

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia (“Lessor”), and **THE SHACK NEIGHBORHOOD HOUSE, INC.**, a West Virginia non-profit corporation with its principal office address at 537 Blue Horizon Drive, Pursglove, West Virginia 26546 (“Lessee”), upon the following terms:

### RECITALS

- A. Lessor is the sole owner of the premises described below.
- B. Lessee is a non-profit organization that was established to conduct civic and social services, including child care, recreation programs, and food services; and desires to lease office space from lessor.
- C. The parties desire to enter a lease agreement defining their respective rights, duties, and liabilities relating to the premises.

In consideration of the matters described above and of the mutual benefits and obligations set forth in this lease agreement, the parties agree as follows:

### SECTION ONE. DESCRIPTION OF PREMISES

- A. Lessor leases to lessee that certain space consisting of the **ground floor activity room including offices/closets off of that room, 3 classrooms on 1st floor (northern, eastern, and southern classroom) including closets off of those room, 1 classroom in basement, kitchen, freezer room, pantry, and use of shared space including restrooms and hallways in basement, ground floor, and 1st floor** located at the former Woodburn Elementary School, consisting of **5,313.10 square feet**, more or less, situated in Morgantown, Monongalia County, West Virginia, and shown on the attached “Exhibit 1,” which is incorporated herein by reference (the “Premises”).
- B. The premises shall be used for the following purpose and for no other purpose: to provide programs for the low-moderate income families in the community, including but not limited to after school programming, summer camps and individualized tutoring.
- C. In addition to the demised premises, the Lessee shall have the right to use all driveways, parking areas, and sidewalks (collectively, “Common Areas”), if any, in or about the Woodburn School building, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will be responsible for routine maintenance of the Common Areas.

### SECTION TWO. TERM OF LEASE

- A. This lease agreement shall cover a term commencing **July 7, 2021** and extending until midnight on the day preceding the **first** anniversary of such date, provided that either of parties to this lease gives to the other, three months before the latter date, notice in writing of the party’s intention to terminate this lease on that date. Otherwise this lease will continue in force for another term of one year, and in the same manner from year to year (“Term”), including all terms and conditions in this lease, until one of parties terminates this lease by notice in writing in some ensuing year in the manner described above, which notice terminates this lease at the end of year for which premises are then held.

B. Lessee shall surrender the premises to lessor immediately on termination of the lease.

### **SECTION THREE. DELIVERY OF POSSESSION**

If, for any reason, lessor cannot deliver possession of the demised premises at the commencement of the term, this lease agreement shall not be void or voidable, nor shall lessor be liable to lessee for any loss or damage resulting from the inability to deliver possession. However, there shall be a proportionate reduction in total rent, covering the period between the commencement of the term and actual delivery of the demised premises to lessee, in the event of a late delivery by lessor.

### **SECTION FOUR. RENTAL**

A. Lessee shall pay a total of **\$34,535.16** per year, resulting in a monthly rate of **\$2,877.93** per month, due on the **1st** day of each month for the succeeding month's rental. This sum reflects annual rate of **\$6.50** per square foot of space. Payments shall be made to lessor at the address specified herein, and a payment shall be delinquent if not paid by the fifth day after which it is due. In any month not entirely covered by the term of this lease, the monthly rental fee shall be prorated according to the number of days of that month covered by the lease term, resulting in a fee for that fractional month equal to (Number of days of month in lease term / number of days in calendar month) x \$2,877.93.

B. The annual rental payment for each year beyond the initial term shall increase by an amount equal to the proportional increase in the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) for all items over the twelve-month period prior to the start of the new yearly term; provided, that in no event shall the annual rental payment increase by an amount less than One Percent (1%) of the prior year annual rental payment.

C. On lessee's failure to pay the rental on a timely basis, lessor shall have the right to terminate this lease agreement, and the lease agreement will then be forfeited.

### **SECTION FIVE. RESTRICTIONS ON USE**

Lessee shall not use or permit the demised premises, or any part of the demised premises, to be used for any purposes other than those set forth in this lease agreement. Lessee shall neither permit on the demised premises any act, sale, or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made or permitted to be made that shall result in: (1) waste on the demised premises; (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building; (3) improper, unlawful, or objectionable use, including sale, storage, or preparation, of food, alcoholic beverages, or materials generating an odor on the premises; or (4) noises or vibrations that may disturb other tenants. Lessee shall comply with all governmental regulations and statutes affecting the demised premises either now or in the future.

### **SECTION SIX. ABANDONING PREMISES OR PERSONAL PROPERTY**

Lessee shall not vacate or abandon the demised premises at any time during the term of this lease agreement. If lessee does vacate or abandon the demised premises or is dispossessed by process of law, any personal property belonging to lessee and left on the demised premises shall be deemed abandoned at the option of lessor and shall become the property of lessor.

### **SECTION SEVEN. UTILITIES AND SERVICES**

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

- (i) Custodial services in the common areas used by other tenants.
- (ii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.
- (iii) Snow removal in front of the Activity Center, including only the front of the modular building constituting the Leased Premises and the walkway adjacent thereto, to be paid by the Lessor if third-party services are required, who shall be entitled to reimbursement as Additional Rent from the Lessee upon Lessor's delivery of a separate invoice, providing evidence of payment made.
- (iv) Utilities including natural gas, electric, and water.
- (v) Trash service

B. The Lessee, at its expense, shall furnish and provide payment to the applicable company or vendor for the following utilities and/or services:

- (i) Custodial Services in the demised premises, excluding common areas.
- (ii) Telephone and internet connectivity services, as desired by Lessee.
- (iii) The Lessee shall have the right to rekey locks, install a key card access system, or provide any other security system for the demised premises, using such security services provider as the Lessee may choose in its sole discretion, provided that Lessee shall ensure Lessor is able to access the premises through such locks or system. The Lessee may remove said system at any time during the term of this lease, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal and ensure that an adequate method for securing the demised premises is in place.

C. In the event that any utilities or services being provided by the Lessor are interrupted for reasons within the Lessor's control and as a result, suitability of the Premises is interrupted, the Lessee shall have the option to (i) cause the utilities or services to be reinstated and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed for such expenditures; or (ii) terminate this Lease upon notice to Lessor and Lessor's failure to cure such default within three (3) business days.

## **SECTION EIGHT. ALTERATIONS AND MODIFICATION; REPAIRS**

A. Lessee has inspected the demised premises, and they are now in a tenantable and good condition, except as specifically identified by Lessee on the attached "Schedule 1 – Lessee Identification of Defects."

B. Lessee shall take good care of the demised premises and shall not alter, repair, or change the demised premises without the prior, express, and written consent of lessor, which consent shall not be unreasonably withheld.

C. All alterations, improvements, and changes that lessor allows shall be done either by or under the direction of lessee and at the expense of lessee. Lessor shall not have the right to control the manner of performance or the selection of contractors, and it is the intent of the parties that no public funds be contributed either directly or indirectly to the payment for any alterations or improvements. Lessee shall be responsible for ensuring that any approved alterations or improvements are performed in compliance with applicable laws. All alterations and improvements shall become the property of lessor and remain on the demised premises, except that at the option of lessor, lessee shall, at its expense, remove from the demised premises all partitions, counters, railings, and similarly installed improvements when surrendering the demised premises.

D. All damage or injury done to the demised premises by lessee or any person who may be in or on the demised premises with the consent of lessee shall be paid for by lessee.

E. Lessee shall, at the termination of this lease agreement, surrender the demised premises to lessor in as good condition and repair as reasonable and proper use of the premises will permit.

F. Lessor shall be responsible for making all routine repairs and for performing routine maintenance in the demised premises except the services and maintenance for which Lessee is responsible pursuant to **Section 7.B.** of this Agreement. Lessee shall permit lessor and lessor's agents to enter the demised premises at all reasonable times to inspect them, clean windows, perform other janitorial services, maintain the building and demised premises, make repairs, alterations, or additions to the demised premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of nonliability for alterations, additions, or repairs, or to place on the premises any usual or ordinary "For Sale" signs, without any rebate of rent to lessee or damages for any loss of occupation or quiet enjoyment of the demised premises. Lessor may, at any time within ninety days prior to the expiration of this lease agreement, place on the windows and doors of the premises any usual or ordinary "To Let" or "To Lease" signs. Lessor and lessor's agents may, during the last-mentioned period, enter on the demised premises at reasonable hours and exhibit them to prospective tenants.

**SECTION NINE. LIMITATION OF LIABILITY; INDEMNIFICATION**

A. Lessee waives all claims against lessor for damages to goods or for injuries to persons on or about the demised premises from any cause arising at any time.

B. Lessee will indemnify lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the demised premises by lessee, or arising from the failure of lessee to keep the demised premises in good condition as provided in this lease agreement.

C. Lessor shall not be liable to lessee for any damage by or from any act or negligence of any other occupant of the same building, or by any owner or occupant of adjoining or contiguous property.

D. Lessee agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants of the building caused by the misuse or neglect of the demised premises by lessee.

E. Lessee shall defend, indemnify, and hold harmless the lessor and its representatives and employees from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not limited to, attorney fees, court costs, and expert fees), of any nature whatsoever arising out of, or incidental to, this Lease Agreement or Lessee's use or occupancy of the leased premises, or the acts or omissions of the Lessee, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, regardless of where the injury, death, loss, or damage may occur unless such injury, death, loss, or damage is caused by the sole negligence of the Lessor, its employees, agents, officers, or representatives. The Lessor shall give Lessee reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

F. In order to assure its ability to defend and hold harmless the lessor, lessee shall carry insurance in the following minimum amounts during the term of this lease, naming the lessor as an additional insured on the policy(ies):

Bodily Injury .....\$1,000,000 per occurrence  
Property Damage.....\$ 100,000 per occurrence

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

H. The Lessor agrees to notify the lessee in writing, as soon as practicable, of any claims, demands, or action arising out of an occurrence covered hereunder of which the lessor has knowledge, and to cooperate with the lessee in the investigation and defense thereof.

## **SECTION TEN. DESTRUCTION OF PREMISES**

A. In the event of a partial destruction of the demised premises during the term of this lease agreement from any cause, lessor may, at its option, repair the demised premises.

B. Any partial destruction of the demised premises shall neither annul nor void this lease agreement, except that lessee shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by lessee on the demised premises. Lessor may, at lessor's option, make repairs within a reasonable time, this lease agreement continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this section. If lessor elects not to make repairs, or if repairs cannot be made under the laws and regulations of the applicable governmental authorities, this lease agreement may be terminated at the option of either party.

C. In the event of any partial destruction of the demised premises which lessor may elect to repair under the terms of this section, the provisions of any statute or common law rule authorizing lessee to make the repairs and deduct the expenses from the rent are waived by lessee.

D. A total destruction of the building in which the demised premises are situated shall terminate this lease agreement.

## **SECTION ELEVEN. CONDEMNATION**

A condemnation of the entire building or a condemnation of the portion of the demised premises occupied by lessee shall result in a termination of this lease agreement. Lessor shall receive the total of any consequential damages awarded as a result of condemnation proceedings. All future rent installments to be paid by lessee under this lease shall be terminated.

## **SECTION TWELVE. ASSIGNMENT AND SUBLEASE**

A. Lessee shall not assign any rights or duties under this lease agreement nor sublet the demised premises or any part of the demised premises, nor allow any other person to occupy or use the demised premises without the prior, express, and written consent of lessor. A consent to one assignment, sublease, or occupation or use by any other person shall not be a consent to any subsequent assignment, sublease, or occupation or use by another person. Any assignment or subletting without consent shall be void.

B. This lease agreement shall not be assignable, as to the interest of lessee, by operation of law, without the written consent of lessor.

C. Lessor may withhold consent to an assignment or sublease of the demised premises in lessor's sole discretion.

## **SECTION THIRTEEN. BREACH OR DEFAULT**

Lessee shall have breached this lease agreement and shall be considered in default under this lease agreement if: (1) lessee fails to pay any rent when due and does not make the delinquent payment within five days after receipt of notice from lessor; or (2)

lessee fails to perform or comply with any of the covenants or conditions of this lease agreement and such failure continues for a period of ten days after receipt of notice from lessor in the fashion described in Section 21 below.

#### **SECTION FOURTEEN. LESSOR'S REMEDIES**

In the event of a breach of this lease agreement as set forth in SECTION THIRTEEN above, the rights of lessor shall be as follows:

A. Lessor shall have the right to cancel and terminate this lease agreement, as well as all of the right, title, and interest of lessee under this lease agreement, by giving to lessee not less than five days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this lease agreement and the right, title, and interest of lessee under this lease agreement shall terminate in the same manner and with the same force and effect, except as to lessee's liability, as if the date fixed in the notice of cancellation and termination were the end of the lease term.

B. Lessor may elect but shall not be obligated to make any payment required of lessee in this lease agreement or comply with any agreement, term, or condition required by this lease agreement to be performed by lessee. Lessor shall have the right to enter the demised premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied. However, any expenditure by lessor incurred in any such correction of a default shall not be deemed to waive or release lessee's default or lessor's right to take any action as may be otherwise permissible under this lease agreement in the case of any default.

C. Lessor may reenter the demised premises immediately and remove the property and personnel of lessee, and store the property in a public warehouse or at a place selected by lessor, at the expense of lessee. After reentry lessor may terminate this lease agreement on giving five days' written notice of termination to lessee. Without the notice, reentry will not terminate this lease agreement. On termination, lessor may recover from lessee all damages proximately resulting from the breach, including the cost of recovering the demised premises and the worth of the balance of this lease agreement over the reasonable rental value of the demised premises for the remainder of the lease term, which sum shall be immediately due lessor from lessee.

After reentry, lessor may relet the demised premises or any part of the demised premises for any term without terminating this lease agreement, at the rent and on the terms as lessor may choose. Lessor may make alterations and repairs to the demised premises. The duties and liabilities of the parties if the demised premises are relet as provided in this paragraph shall be as follows:

1. In addition to lessee's liability to lessor for breach of the lease agreement, lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by lessor under the new lease agreement and the rent installments that are due for the same period under this lease agreement.

2. Lessor shall have the right to apply the rent received from reletting the premises (a) to reduce lessee's indebtedness to lessor under this lease agreement, not including indebtedness for rent, (b) to expenses of the reletting and alterations and repairs made, (c) to rent due under this lease agreement, or (d) to payment of future rent under this lease agreement as it becomes due.

If the new lessee does not pay a rent installment promptly to lessor, and the rent installment has been credited in advance of payment to the indebtedness of lessee other than rent, or if rentals from the new lessee have been otherwise applied by lessor as provided for in this section, and during any rent installment period, are less than the rent payable for the corresponding installment period under this lease agreement, lessee shall pay lessor the deficiency, separately for each rent installment deficiency period and before the end of that period. Lessor may at any time after a reletting terminate this lease agreement for the breach on which lessor had based the reentry and subsequently relet the premises.

D. After reentry, lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of lessee, and, if necessary to collect the rents and profits the receiver may carry on the business of lessee and take possession of the personal property used in the business of lessee, including inventory, trade fixtures, and furnishings, and use them in the business without compensating lessee.

#### **SECTION FIFTEEN. UNLAWFUL DETAINER AND ATTORNEYS' FEES**

In case suit shall be brought for an unlawful detainer of the demised premises, for the recovery of any rent due under the provisions of this lease agreement, or for lessee's breach of any other condition contained in this lease agreement, lessee shall pay to lessor reasonable attorneys' fees that shall be fixed by the court. Any such attorneys' fee shall be deemed to have accrued on the commencement of the action and shall be paid on the successful completion of the action by lessor. Lessee shall be entitled to attorneys' fees in the same manner if judgment is rendered for lessee.

#### **SECTION SIXTEEN. REMEDIES OF LESSOR CUMULATIVE**

The remedies given to lessor in this lease agreement shall be cumulative, and the exercise of any one remedy by lessor shall not be to the exclusion of any other remedy.

#### **SECTION SEVENTEEN. GOVERNING LAW**

This lease agreement shall be governed by, construed, and enforced in accordance with the laws of the State of West Virginia.

#### **SECTION EIGHTEEN. NO WAIVER**

Waiver by lessor of any breach of any covenant or duty of lessee under this lease is not a waiver of a breach of any other covenant or duty of lessee, or of any subsequent breach of the same covenant or duty.

#### **SECTION NINETEEN. ENTIRE AGREEMENT**

This lease agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this lease agreement shall not be binding upon either party except to the extent incorporated in this lease agreement.

#### **SECTION TWENTY. MODIFICATION OF AGREEMENT**

Any modification of this lease agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

#### **SECTION TWENTY-ONE. NOTICES**

A. All notices, demands, or other writings in this lease agreement provided to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

If to lessor: City of Morgantown  
c/o City Manager  
430 Spruce Street  
Morgantown, WV 26505  
With a copy to [rsimonton@morgantownwv.gov](mailto:rsimonton@morgantownwv.gov)

If to lessee: The Shack Neighborhood House, Inc.  
c/o Shawnda Cook, Executive Director  
P.O. Box 600  
Pursglove, WV 26546  
With a copy to \_\_\_\_\_

B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

#### **SECTION TWENTY-TWO. COUNTERPARTS**

This lease agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

#### **SECTION TWENTY-THREE. SECTION HEADINGS**

The titles to the sections of this lease agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this lease agreement.

The parties have executed this lease agreement in Morgantown, Monongalia County, West Virginia the day and year first set forth above.

[Signature page follows]

**LESSOR:** City of Morgantown

By: \_\_\_\_\_  
A. Kim Haws  
City Manager

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by A. Kim Haws, City Manager of the City of Morgantown, West Virginia.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

**LESSEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Shawnda Cook, as Executive Director of The Shack Neighborhood House, Inc..

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

Schedule 1 – Lessee Identification of Defects

**AN ORDINANCE AUTHORIZING A LEASE WITH MOUNTAINEER HOMESCHOOL HUB AT THE FORMER WOODBURN SCHOOL**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease with Mountaineer Homeschool Hub, Inc., and to execute such additional documents and take such additional actions as are necessary and helpful to executing and implementing the terms of the lease agreement.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

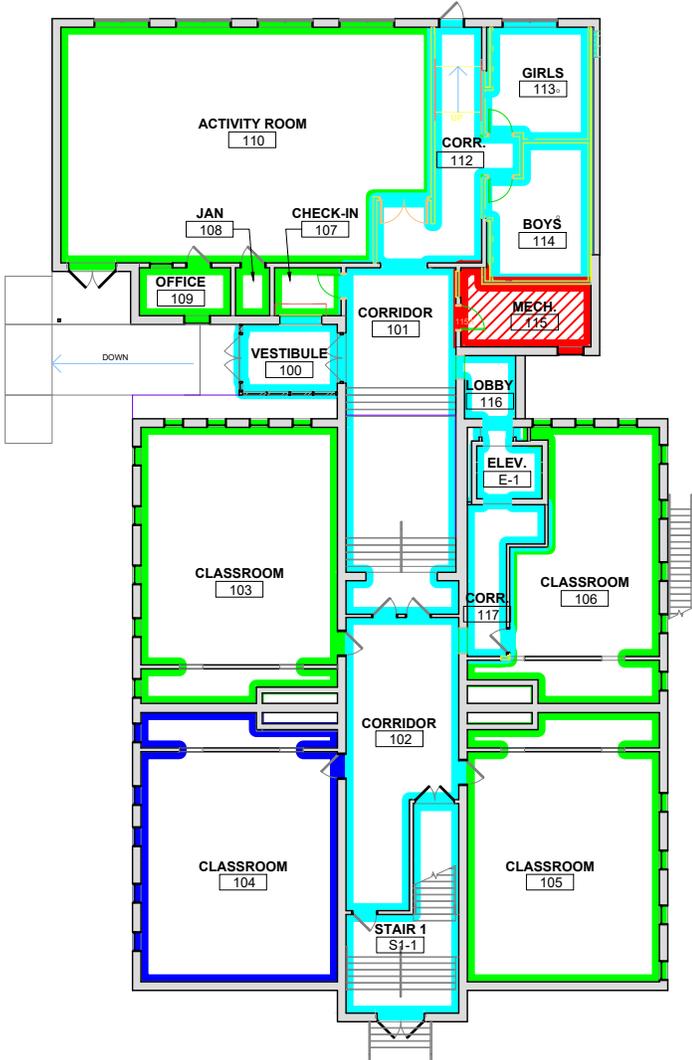
\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_



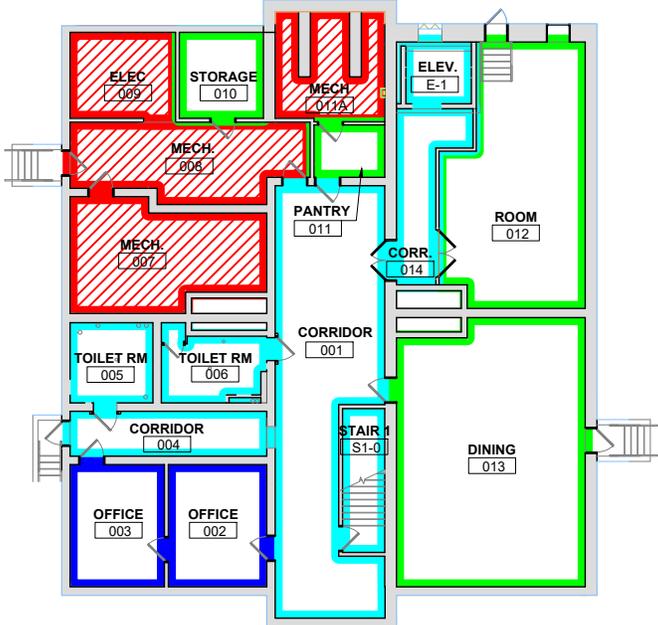
# EXHIBIT 1

## Area Leased to "Mountaineer Homeschool Hub"



**1st Floor Level**

Classroom	104	-	832.30	sqft
Sub-Total			832.30	sqft
Total			1,214.70	sqft



**Basement Floor Level**

Office	002	-	195.4	sqft
Office	003	-	187	sqft
Sub-Total			382.40	sqft

- █ Areas Leased by MHH
- █ Common Areas
- █ Areas Leased by Others
- █ Areas Off-Limits

## LEASE AGREEMENT

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia (“Lessor”), and **MOUNTAINEER HOMESCHOOL HUB, INC.**, a West Virginia non-profit corporation with its principal office address at 219 Hartman Run Road, Morgantown, West Virginia 26505 (“Lessee”), upon the following terms:

### RECITALS

- A. Lessor is the sole owner of the premises described below.
- B. Lessee is a non-profit organization that was established to conduct educational services and educational support services and desires to lease office space from lessor.
- C. The parties desire to enter a lease agreement defining their respective rights, duties, and liabilities relating to the premises.

In consideration of the matters described above and of the mutual benefits and obligations set forth in this lease agreement, the parties agree as follows:

### SECTION ONE. DESCRIPTION OF PREMISES

- A. Lessor leases to lessee that certain space consisting of the **1 classroom on 1<sup>st</sup> floor (western classroom) including closet off of that room, two offices in basement, and nonexclusive use of shared space including restrooms and hallways in basement, ground floor, and 1<sup>st</sup> floor** located at the former Woodburn Elementary School, consisting of **1,214.70 square feet**, more or less, situated in Morgantown, Monongalia County, West Virginia, and shown on the attached “Exhibit 1,” which is incorporated herein by reference (the “Premises”).
- B. The premises shall be used for the following purpose and for no other purpose: to provide educational needs of homeschoolers and their families, as well as other community members, by offering classes, activities, special events, and resources.
- C. In addition to the demised premises, the Lessee shall have the right to use all driveways, parking areas, and sidewalks (collectively, “Common Areas”), if any, in or about the Woodburn School building, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will be responsible for routine maintenance of the Common Areas.

### SECTION TWO. TERM OF LEASE

- A. This lease agreement shall cover a term commencing **July 7, 2021** and extending until midnight on the day preceding the **first** anniversary of such date, provided that either of parties to this lease gives to the other, three months before the latter date, notice in writing of the party’s intention to terminate this lease on that date. Otherwise this lease will continue in force for another term of one year, and in the same manner from year to year (“Term”), including all terms and conditions in this lease, until one of parties terminates this lease by notice in writing in some ensuing year in the manner described above, which notice terminates this lease at the end of year for which premises are then held.

B. Lessee shall surrender the premises to lessor immediately on termination of the lease.

### **SECTION THREE. DELIVERY OF POSSESSION**

If, for any reason, lessor cannot deliver possession of the demised premises at the commencement of the term, this lease agreement shall not be void or voidable, nor shall lessor be liable to lessee for any loss or damage resulting from the inability to deliver possession. However, there shall be a proportionate reduction in total rent, covering the period between the commencement of the term and actual delivery of the demised premises to lessee, in the event of a late delivery by lessor.

### **SECTION FOUR. RENTAL**

A. Lessee shall pay a total of **\$5,769.84** per year, resulting in a monthly rate of **\$480.82** per month, due on the **1st** day of each month for the succeeding month's rental. This sum reflects annual rate of **\$4.75** per square foot of space. Payments shall be made to lessor at the address specified herein, and a payment shall be delinquent if not paid by the fifth day after which it is due. In any month not entirely covered by the term of this lease, the monthly rental fee shall be prorated according to the number of days of that month covered by the lease term, resulting in a fee for that fractional month equal to (Number of days of month in lease term / number of days in calendar month) x \$657.96.

B. The annual rental payment for each year beyond the initial term shall increase by an amount equal to the proportional increase in the U.S. City Average of the Consumer Price Index for All Urban Consumers (CPI-U) for all items over the twelve-month period prior to the start of the new yearly term; provided, that in no event shall the annual rental payment increase by an amount less than One Percent (1%) of the prior year annual rental payment.

C. On lessee's failure to pay the rental on a timely basis, lessor shall have the right to terminate this lease agreement, and the lease agreement will then be forfeited.

### **SECTION FIVE. RESTRICTIONS ON USE**

Lessee shall not use or permit the demised premises, or any part of the demised premises, to be used for any purposes other than those set forth in this lease agreement. Lessee shall neither permit on the demised premises any act, sale, or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made or permitted to be made that shall result in: (1) waste on the demised premises; (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building; (3) improper, unlawful, or objectionable use, including sale, storage, or preparation, of food, alcoholic beverages, or materials generating an odor on the premises; or (4) noises or vibrations that may disturb other tenants. Lessee shall comply with all governmental regulations and statutes affecting the demised premises either now or in the future.

### **SECTION SIX. ABANDONING PREMISES OR PERSONAL PROPERTY**

Lessee shall not vacate or abandon the demised premises at any time during the term of this lease agreement. If lessee does vacate or abandon the demised premises or is dispossessed by process of law, any personal property belonging to lessee and left on the demised premises shall be deemed abandoned at the option of lessor and shall become the property of lessor.

### **SECTION SEVEN. UTILITIES AND SERVICES**

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

- (i) Custodial services in the common areas used by other tenants.
- (ii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.
- (iii) Snow removal in front of the Activity Center, including only the front of the modular building constituting the Leased Premises and the walkway adjacent thereto, to be paid by the Lessor if third-party services are required, who shall be entitled to reimbursement as Additional Rent from the Lessee upon Lessor's delivery of a separate invoice, providing evidence of payment made.
- (iv) Utilities including natural gas, electric, and water.
- (v) Trash service

B. The Lessee, at its expense, shall furnish and provide payment to the applicable company or vendor for the following utilities and/or services:

- (i) Custodial Services in the demised premises, excluding common areas.
- (ii) Telephone and internet connectivity services, as desired by Lessee.
- (iii) The Lessee shall have the right to rekey locks, install a key card access system, or provide any other security system for the demised premises, using such security services provider as the Lessee may choose in its sole discretion, provided that Lessee shall ensure Lessor is able to access the premises through such locks or system. The Lessee may remove said system at any time during the term of this lease, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal and ensure that an adequate method for securing the demised premises is in place.

C. In the event that any utilities or services being provided by the Lessor are interrupted for reasons within the Lessor's control and as a result, suitability of the Premises is interrupted, the Lessee shall have the option to (i) cause the utilities or services to be reinstated and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed for such expenditures; or (ii) terminate this Lease upon notice to Lessor and Lessor's failure to cure such default within three (3) business days.

## **SECTION EIGHT. ALTERATIONS AND MODIFICATION; REPAIRS**

A. Lessee has inspected the demised premises, and they are now in a tenantable and good condition, except as specifically identified by Lessee on the attached "Schedule 1 – Lessee Identification of Defects."

B. Lessee shall take good care of the demised premises and shall not alter, repair, or change the demised premises without the prior, express, and written consent of lessor, which consent shall not be unreasonably withheld.

C. All alterations, improvements, and changes that lessor allows shall be done either by or under the direction of lessee and at the expense of lessee. Lessor shall not have the right to control the manner of performance or the selection of contractors, and it is the intent of the parties that no public funds be contributed either directly or indirectly to the payment for any alterations or improvements. Lessee shall be responsible for ensuring that any approved alterations or improvements are performed in compliance with applicable laws. All alterations and improvements shall become the property of lessor and remain on the demised premises, except that at the option of lessor, lessee shall, at its expense, remove from the demised premises all partitions, counters, railings, and similarly installed improvements when surrendering the demised premises.

D. All damage or injury done to the demised premises by lessee or any person who may be in or on the demised premises with the consent of lessee shall be paid for by lessee.

E. Lessee shall, at the termination of this lease agreement, surrender the demised premises to lessor in as good condition and repair as reasonable and proper use of the premises will permit.

F. Lessor shall be responsible for making all routine repairs and for performing routine maintenance in the demised premises except the services and maintenance for which Lessee is responsible pursuant to **Section 7.B.** of this Agreement. Lessee shall permit lessor and lessor's agents to enter the demised premises at all reasonable times to inspect them, clean windows, perform other janitorial services, maintain the building and demised premises, make repairs, alterations, or additions to the demised premises, or any portion of the building, including the erection of scaffolding, props, or other mechanical devices, to post notices of nonliability for alterations, additions, or repairs, or to place on the premises any usual or ordinary "For Sale" signs, without any rebate of rent to lessee or damages for any loss of occupation or quiet enjoyment of the demised premises. Lessor may, at any time within ninety days prior to the expiration of this lease agreement, place on the windows and doors of the premises any usual or ordinary "To Let" or "To Lease" signs. Lessor and lessor's agents may, during the last-mentioned period, enter on the demised premises at reasonable hours and exhibit them to prospective tenants.

**SECTION NINE. LIMITATION OF LIABILITY; INDEMNIFICATION**

A. Lessee waives all claims against lessor for damages to goods or for injuries to persons on or about the demised premises from any cause arising at any time.

B. Lessee will indemnify lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the demised premises by lessee, or arising from the failure of lessee to keep the demised premises in good condition as provided in this lease agreement.

C. Lessor shall not be liable to lessee for any damage by or from any act or negligence of any other occupant of the same building, or by any owner or occupant of adjoining or contiguous property.

D. Lessee agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants of the building caused by the misuse or neglect of the demised premises by lessee.

E. Lessee shall defend, indemnify, and hold harmless the lessor and its representatives and employees from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not limited to, attorney fees, court costs, and expert fees), of any nature whatsoever arising out of, or incidental to, this Lease Agreement or Lessee's use or occupancy of the leased premises, or the acts or omissions of the Lessee, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, regardless of where the injury, death, loss, or damage may occur unless such injury, death, loss, or damage is caused by the sole negligence of the Lessor, its employees, agents, officers, or representatives. The Lessor shall give Lessee reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

F. In order to assure its ability to defend and hold harmless the lessor, lessee shall carry insurance in the following minimum amounts during the term of this lease, naming the lessor as an additional insured on the policy(ies):

Bodily Injury .....\$1,000,000 per occurrence  
Property Damage.....\$ 100,000 per occurrence

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

H. The Lessor agrees to notify the lessee in writing, as soon as practicable, of any claims, demands, or action arising out of an occurrence covered hereunder of which the lessor has knowledge, and to cooperate with the lessee in the investigation and defense thereof.

## **SECTION TEN. DESTRUCTION OF PREMISES**

A. In the event of a partial destruction of the demised premises during the term of this lease agreement from any cause, lessor may, at its option, repair the demised premises.

B. Any partial destruction of the demised premises shall neither annul nor void this lease agreement, except that lessee shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by lessee on the demised premises. Lessor may, at lessor's option, make repairs within a reasonable time, this lease agreement continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this section. If lessor elects not to make repairs, or if repairs cannot be made under the laws and regulations of the applicable governmental authorities, this lease agreement may be terminated at the option of either party.

C. In the event of any partial destruction of the demised premises which lessor may elect to repair under the terms of this section, the provisions of any statute or common law rule authorizing lessee to make the repairs and deduct the expenses from the rent are waived by lessee.

D. A total destruction of the building in which the demised premises are situated shall terminate this lease agreement.

## **SECTION ELEVEN. CONDEMNATION**

A condemnation of the entire building or a condemnation of the portion of the demised premises occupied by lessee shall result in a termination of this lease agreement. Lessor shall receive the total of any consequential damages awarded as a result of condemnation proceedings. All future rent installments to be paid by lessee under this lease shall be terminated.

## **SECTION TWELVE. ASSIGNMENT AND SUBLEASE**

A. Lessee shall not assign any rights or duties under this lease agreement nor sublet the demised premises or any part of the demised premises, nor allow any other person to occupy or use the demised premises without the prior, express, and written consent of lessor. A consent to one assignment, sublease, or occupation or use by any other person shall not be a consent to any subsequent assignment, sublease, or occupation or use by another person. Any assignment or subletting without consent shall be void.

B. This lease agreement shall not be assignable, as to the interest of lessee, by operation of law, without the written consent of lessor.

C. Lessor may withhold consent to an assignment or sublease of the demised premises in lessor's sole discretion.

## **SECTION THIRTEEN. BREACH OR DEFAULT**

Lessee shall have breached this lease agreement and shall be considered in default under this lease agreement if: (1) lessee fails to pay any rent when due and does not make the delinquent payment within five days after receipt of notice from lessor; or (2)

lessee fails to perform or comply with any of the covenants or conditions of this lease agreement and such failure continues for a period of ten days after receipt of notice from lessor in the fashion described in Section 21 below.

#### **SECTION FOURTEEN. LESSOR'S REMEDIES**

In the event of a breach of this lease agreement as set forth in SECTION THIRTEEN above, the rights of lessor shall be as follows:

A. Lessor shall have the right to cancel and terminate this lease agreement, as well as all of the right, title, and interest of lessee under this lease agreement, by giving to lessee not less than five days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this lease agreement and the right, title, and interest of lessee under this lease agreement shall terminate in the same manner and with the same force and effect, except as to lessee's liability, as if the date fixed in the notice of cancellation and termination were the end of the lease term.

B. Lessor may elect but shall not be obligated to make any payment required of lessee in this lease agreement or comply with any agreement, term, or condition required by this lease agreement to be performed by lessee. Lessor shall have the right to enter the demised premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied. However, any expenditure by lessor incurred in any such correction of a default shall not be deemed to waive or release lessee's default or lessor's right to take any action as may be otherwise permissible under this lease agreement in the case of any default.

C. Lessor may reenter the demised premises immediately and remove the property and personnel of lessee, and store the property in a public warehouse or at a place selected by lessor, at the expense of lessee. After reentry lessor may terminate this lease agreement on giving five days' written notice of termination to lessee. Without the notice, reentry will not terminate this lease agreement. On termination, lessor may recover from lessee all damages proximately resulting from the breach, including the cost of recovering the demised premises and the worth of the balance of this lease agreement over the reasonable rental value of the demised premises for the remainder of the lease term, which sum shall be immediately due lessor from lessee.

After reentry, lessor may relet the demised premises or any part of the demised premises for any term without terminating this lease agreement, at the rent and on the terms as lessor may choose. Lessor may make alterations and repairs to the demised premises. The duties and liabilities of the parties if the demised premises are relet as provided in this paragraph shall be as follows:

1. In addition to lessee's liability to lessor for breach of the lease agreement, lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by lessor under the new lease agreement and the rent installments that are due for the same period under this lease agreement.

2. Lessor shall have the right to apply the rent received from reletting the premises (a) to reduce lessee's indebtedness to lessor under this lease agreement, not including indebtedness for rent, (b) to expenses of the reletting and alterations and repairs made, (c) to rent due under this lease agreement, or (d) to payment of future rent under this lease agreement as it becomes due.

If the new lessee does not pay a rent installment promptly to lessor, and the rent installment has been credited in advance of payment to the indebtedness of lessee other than rent, or if rentals from the new lessee have been otherwise applied by lessor as provided for in this section, and during any rent installment period, are less than the rent payable for the corresponding installment period under this lease agreement, lessee shall pay lessor the deficiency, separately for each rent installment deficiency period and before the end of that period. Lessor may at any time after a reletting terminate this lease agreement for the breach on which lessor had based the reentry and subsequently relet the premises.

D. After reentry, lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of lessee, and, if necessary to collect the rents and profits the receiver may carry on the business of lessee and take possession of the personal property used in the business of lessee, including inventory, trade fixtures, and furnishings, and use them in the business without compensating lessee.

#### **SECTION FIFTEEN. UNLAWFUL DETAINER AND ATTORNEYS' FEES**

In case suit shall be brought for an unlawful detainer of the demised premises, for the recovery of any rent due under the provisions of this lease agreement, or for lessee's breach of any other condition contained in this lease agreement, lessee shall pay to lessor reasonable attorneys' fees that shall be fixed by the court. Any such attorneys' fee shall be deemed to have accrued on the commencement of the action and shall be paid on the successful completion of the action by lessor. Lessee shall be entitled to attorneys' fees in the same manner if judgment is rendered for lessee.

#### **SECTION SIXTEEN. REMEDIES OF LESSOR CUMULATIVE**

The remedies given to lessor in this lease agreement shall be cumulative, and the exercise of any one remedy by lessor shall not be to the exclusion of any other remedy.

#### **SECTION SEVENTEEN. GOVERNING LAW**

This lease agreement shall be governed by, construed, and enforced in accordance with the laws of the State of West Virginia.

#### **SECTION EIGHTEEN. NO WAIVER**

Waiver by lessor of any breach of any covenant or duty of lessee under this lease is not a waiver of a breach of any other covenant or duty of lessee, or of any subsequent breach of the same covenant or duty.

#### **SECTION NINETEEN. ENTIRE AGREEMENT**

This lease agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this lease agreement shall not be binding upon either party except to the extent incorporated in this lease agreement.

#### **SECTION TWENTY. MODIFICATION OF AGREEMENT**

Any modification of this lease agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

#### **SECTION TWENTY-ONE. NOTICES**

A. All notices, demands, or other writings in this lease agreement provided to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

If to lessor: City of Morgantown  
c/o City Manager  
430 Spruce Street  
Morgantown, WV 26505  
With a copy to [rsimonton@morgantownwv.gov](mailto:rsimonton@morgantownwv.gov)

If to lessee: Mountaineer Homeschool Hub, Inc.  
c/o Angela Channell, President  
219 Hartman Run Road  
Morgantown, WV 26505  
With a copy to \_\_\_\_\_

B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

#### **SECTION TWENTY-TWO. COUNTERPARTS**

This lease agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

#### **SECTION TWENTY-THREE. SECTION HEADINGS**

The titles to the sections of this lease agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this lease agreement.

The parties have executed this lease agreement in Morgantown, Monongalia County, West Virginia the day and year first set forth above.

[Signature page follows]

**LESSOR:** City of Morgantown

By: \_\_\_\_\_  
A. Kim Haws  
City Manager

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by A. Kim Haws, City Manager of the City of Morgantown, West Virginia.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

**LESSEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Angela Channell, as President of Mountaineer Homeschool Hub, Inc.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County

Schedule 1 – Lessee Identification of Defects