



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
cityclerk@morgantown.com

AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
Tuesday, August 31, 2010
7:00 p.m.

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

1. **PUBLIC PORTION**
2. **JEROME PARK (OPTION TO PURCHASE AGREEMENT)**
3. **OTHER POST-EMPLOYMENT BENEFITS**
4. **PROPOSED ORDINANCE-PROHIBIT DEER FEEDING**
5. **PROPOSED ORDINANCE-INTERGOVERNMENTAL AGREEMENT BETWEEN CITY AND STATE ARMORY BOARD, AND DEED FROM CITY TO ARMORY BOARD**
6. **PROPOSED ORDINANCE-INTERGOVERNMENTAL AGREEMENT BETWEEN CITY AND MON.COUNTY DEVELOPMENT AUTHORITY-AIRPORT PROPERTY TRANSFER**
7. **CITY STREET LIGHTING**
8. **PEDESTRIAN SAFETY PLAN**
9. **GRAFFITI; COUCHES; STREET SIGNS**
10. **RENTAL HOUSING AGENTS**
11. **TAILGATING PERMITS**
12. **PROPOSED ORDINANCE- AMENDING BUILDING & HOUSING CODE BY ADDING NEW SECTION: BOARDING STANDARDS FOR STRUCTURES**
13. **PROPOSED ORDINANCE AUTHORIZING A LEASE AGREEMENT BETWEEN CITY AND APHELION AVIATION FOR SPACE AT THE MORGANTOWN AIRPORT**

*If you need an accommodation contact us at 284-7439.

OPTION TO PURCHASE

THIS AGREEMENT made and entered into this _____ day of _____ between Sandra Paul Moore, (hereinafter referred to as "Seller") and the City of Morgantown (hereinafter referred to as "Purchaser").

NOW THEREFORE WITNESSETH that for and in consideration of the sum of \$10,000.00 and the mutual covenants, promises and agreements herein contained the parties agree as follows:

1. THE RIGHT TO PURCHASE PROPERTY: Seller hereby gives to Purchaser the exclusive right to purchase upon the following terms and conditions, all of those certain parcels of real estate situate in the Sixth Ward, City of Morgantown, Monongalia County, West Virginia described as Tax Map 24, Parcels 296, 312, 312.1 and 314; and being the same realty appraised by DEAL APPRAISALS in a report prepared for Seller dated November 9, 2009.
2. TERM OF RIGHT TO PURCHASE: Purchaser may exercise its right to purchase by providing written notice of its exercise of right to purchase at any time prior to 5:00 p.m. on March 30, 2011. Purchaser may automatically renew the option for a second year, expiring March 30, 2012, by making another \$10,000.00 payment to Seller prior to the first option expiring.
3. PURCHASE PRICE: The purchase price for the property shall be \$257,000.00. The \$10,000.00 paid by Purchaser to Seller, for this option, as well as any money paid Purchaser to Seller for a one year renewal of this option shall be applied to the Purchase Price.
4. FINANCING BY SELLER In the event Purchaser is unable to acquire partial

Federal Funding to pay Seller for the realty, Seller agrees to owner finance the purchase of the realty over a five year term at no interest.

5. NOTICE OF EXERCISE OF RIGHT TO PURCHASE: Purchaser shall notify the Seller of its intent to exercise its option to purchase by certified mail, postage prepaid, return receipt requested and addressed as follows:

Sandra Paul Moore
1201 Windsor Avenue
Morgantown, WV 26505

6. CLOSING: The closing and consummation of the optioned property shall take place within ninety (90) days of the mailing of the notice of exercise of right to purchase at a time and place mutually agreed to by the parties. Seller shall deliver possession of the property to Purchaser at closing. Purchaser shall pay for preparation of Deed and any requisite documentary stamps.

7. CONVEYANCE: Seller shall convey the property to Purchaser in fee simple by General Warranty Deed free from all liens and encumbrances.

8. USE OF REALTY: It is understood that should the Purchaser acquire funding from the Land and Water Conservation Fund to purchase the realty, the realty shall only be used for public outdoor recreation use unless the Secretary of the Interior issues written approval for other than public outdoor recreational use. Should Land and Water Conservation fund money be utilized to purchase the realty, the Purchaser agrees not to seek written approval from the Secretary of the Interior to use the realty for other than public outdoor recreational use for a period of ninety-nine years from the date Purchaser obtains title to the realty.

In the event Purchaser does not acquire funding from the Land and Water

Conservation fund to purchase the realty, but purchases the realty through other means, Purchaser agrees not to use the realty for other than public outdoor recreational use for a period of ninety-nine years from the date Purchaser obtains title to the realty.

9. NAMING OF PUBLIC PARK: It is understood that should Purchaser acquire the realty from Seller, Seller shall have the right to request of the Purchaser that the Public Park placed on the realty be named after Seller's father. Purchaser shall honor that request.

10. BINDING EFFECT: It is the intent and purpose of the parties that this option shall be binding upon and incur to the benefit of the respective heirs, executors, administrators, successors and assigns. Nothing in this paragraph, however, shall allow assignment of rights under this option in conflict with other provisions.

11. TIME OF ESSENCE: Time is of the essence in this Option.

12. ENTIRE AGREEMENT: This option contains the entire agreement between the parties with respect to the subject matter hereof and it may not be modified except upon the subsequent further written agreement of the parties. A "Memorandum of Option" shall be executed by the parties to be recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia referencing this Agreement.

13. APPLICABLE LAW. This option shall be construed and interpreted under the laws of the State of West Virginia.

IN WITNESS WHEREOF, this Option Agreement has been executed and sealed in duplicate by the parties hereto as of the day and year first above written.

SELLER:

SANDRA PAUL MOORE

PURCHASER:

CITY OF MORGANTOWN
BY: Dan Boroff, City Manager

City of Morgantown Active Employees

Employee Benefit Plan Changes Effective January 1, 2011

Current Plan

\$500 Deductible
80%/20% Coinsurance (In Network)
Maximum out of pocket = \$1,000 (Individual)
\$3,000 (Family)

Proposed Plan Effective January 1, 2011

\$2,000 Deductible
80%/20% Coinsurance (In Network)
Maximum out of pocket = \$2,500 (Individual)
\$4,500 (Family)

Health Reimbursement Arrangement (HRA) Effective January 1, 2011

HRA Contribution = \$1,500 Annually
HRA allows employees and families to reimburse themselves for approved deductible and coinsurance out of pocket expenses.

Unused dollars can be rolled over from year to year for future healthcare expenses.

Example: Hospital stay = \$1,700

Deductible = \$2,000
HRA = \$1,500
Patient out of pocket = \$200

HRA is 100% employer (City of Morgantown) provided. No payroll deductions go toward the HRA contribution

HRA balance can be used for health care related expenses upon retirement

- *The Dental Plan will become a separate plan effective 1/1/11
- *Plan B (Health Plan) will no longer be offered effective 1/1/11
- *All other Health plan provisions will remain unchanged.

Detailed plan documents and provisions will follow. This is a summary of proposed changes. The plan document will prevail in any discrepancy between the plan documents and this summary.

City of Morgantown Spousal Carve Out Effective January 1, 2011

Effective January 1, 2011, the City of Morgantown Employee Health Plan will implement a Spousal Carve Out.

Spousal Carve Out is a plan provision that requires employees' spouses to take other group health coverage if other coverage is available.

If an employee answers yes to all of the following questions, the spouse would not be eligible effective 1/1/2011.

- 1) Is Your Spouse Employed?
- 2) Does Your Spouse's employer offer group medical insurance to employees?
- 3) Is Your Spouse eligible to participate in his/her group medical insurance program?
- 4) Your Spouse's ~~employer~~^{Does Employer} pay more than fifty percent (50%) of the total annual premium for employee only coverage?

Detailed plan documents and provisions will follow. This is a summary of proposed changes. The plan document will prevail in any discrepancy between the plan documents and this summary.

Questions on any of the changes can be referred to Commercial Insurance (1-800-827-8116) or Deb Smyth at the City of Morgantown.

AN ORDINANCE ADOPTING A NEW SECTION 505.18 WITHIN THE GENERAL OFFENSES CODE OF THE CITY OF MORGANTOWN; PROHIBITING THE FEEDING OF DEER.

The City of Morgantown hereby ordains that a new Section 505.18 is added to its General Offenses Code which reads as follows:

505.18 FEEDING OF DEER PROHIBITED.

(a) Definitions.

In this section "food" means corn, fruit, oats, hay, wheat, alfalfa, salt or mineral blocks, grain, vegetables, human food scraps, commercially sold wildlife feed, birdseed or livestock feed. "Food" does not include shrubs, live crops, plants, flowers, vegetation, gardens, trees, and fruit or nuts that have fallen from trees to the ground.

(b) Feeding of Deer Prohibited. No person shall intentionally feed deer or make food available for consumption by deer on private or public property within the City of Morgantown. A person shall be presumed to have intentionally fed deer, or made food available for consumption by deer, if the person places food, or causes food to be placed, on the ground outdoors or on any outdoor platform that stands fewer than five feet above the ground.

(c) Affirmative Defense. It is an affirmative defense to prosecution under this section if a person places food, in good faith, for the purpose of feeding domestic animals owned and located on the involved property.

(d) Penalty. Whoever violates this Section 505.18 shall be fined \$50.00 for a first violation; \$100.00 for a second violation, and \$500.00 for each violation occurring after a second conviction under this Section.

This Ordinance shall become effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN IT AND THE STATE ARMORY BOARD WHEREIN THE CITY AGREES TO DEED 46.50 ACRES OF AIRPORT REALTY TO THE STATE IN RETURN FOR THE STATE ARMORY BOARD DEEDING ITS MILEGROUND ARMORY REALTY TO THE CITY.

The City of Morgantown hereby ordains that its City Manager is not only authorized to execute the Intergovernmental Agreement hereto attached, but also, upon execution of said Intergovernmental Agreement by the State Armory Board, to execute the deed hereto attached transferring 46.50 acres of Airport realty to the State Armory Board.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

INTERGOVERNMENTAL AGREEMENT

This intergovernmental Agreement entered into this ____ day of _____, 2010, by and between the City of Morgantown, WV, a municipal corporation (hereinafter "City") and the STATE ARMORY BOARD, a body corporate and agency of the State of West Virginia (hereinafter called "State").

HISTORY AND BACKGROUND

The "City" is the owner and operator of the Morgantown Municipal Airport, and the "State" is the owner of 5 acres, more or less, abutting U.S. Route 119 (the Mileground), situate within Morgantown, Monongalia County, West Virginia.

The "State" desires to obtain 46.50 acres, more or less, of the Airport realty from the "City" so that it can construct a new National Guard Readiness Center, and as consideration for the Airport realty has offered to deed to the "City" its 5 acres of realty, and the structures thereon, abutting U.S. Route 119 (the Mileground).

The "City" is agreeable to the proposed realty trade with the "State", and the purpose of this Agreement is to set forth the specific details of the same.

WHEREFORE, the "City" and "State" agree as follows:

- 1) In September of 2010, the "City" will deed to the "State" 46.50 acres as shown and described on Exhibit A, hereto attached.
- 2) The "State" will commence construction of its new Readiness Center on the 46.50 acres in the Spring of 2011.
- 3) Upon completion of its new Readiness Center the "State" will immediately thereafter deed to the "City", as consideration for the 46.50 acres, its 5 acres as shown and described on Exhibit B, hereto attached.
- 4) The "State" anticipates the construction of the new Readiness Center to take eighteen to twenty-four months to complete.
- 5) It is understood by the parties that in any event, the "State" will deed its 5 acres of realty to the "City" no later than twenty four months after initiating construction of its new Readiness Center.
- 6) It is understood that until such time as the "State" deeds its 5 acres to the "City", the "State" shall continue to provide and to keep in force and effect the same insurance coverage upon the 5 acres, and structures upon it, as currently maintained by the "State" on the realty and structures.

- 7) **The “State” shall not allow any liens to be placed against the 5 acres or its structures; and will convey the same to “City” free of any indebtedness of any kind.**
- 8) **The “State” shall continue to maintain and preserve the 5 acres of realty and its structures, until such time as it deeds the property to the City.**
- 9) **As of the date of the Agreement, the “State” agrees not to make any structural alterations to any part of the 5 acres, without the prior written consent of the Morgantown City Manager, which shall be unreasonably withheld.**
- 10) **The “State” shall not assign or lease the 5 acres or any part thereof.**
- 11) **Any communication pertaining to this Agreement which the “City” or the “State” desire to mail to the other party shall be addressed as follows:**

To “City”: The City of Morgantown
City Manager’s Office
389 Spruce Street
Morgantown, WV 26505

To “State”: Office of Adjutant General
Division of Engineering and Facilities
1703 Coonskin Drive
Charleston, WV 25311-1099
ATTN: Col. (Ret.) Donald R. Beightol

or to such other addresses either party shall have designated to the other by like correspondence and the time of the rendition of such shall be when the same is deposited in an official United States Post Office, postage prepaid.

- 12) **That the individuals executing this Agreement have been duly authorized to do so by their respective government bodies.**
- 13) **The laws of the State of West Virginia shall govern the validity, performance and enforcement of this Agreement.**
- 14) **The invalidity or unenforceability of any provision of this Agreement will not affect or impair any other provision.**
- 15) **All negotiations, considerations, representations and understandings between the parties are incorporated herein and may be modified or altered only by agreement in writing between the parties.**

IN WITNESS WHEREOF, the parties have executed two counterparts hereof each of which shall have the same force and effect as if it were an original, as of the day and year first written.

STATE ARMORY BOARD

THE CITY OF MORGANTOWN

By: _____

By: _____

Its: _____

Its: City Manager

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before this _____ day of _____, 2010, by _____

of the State Armory Board by authority duly given.

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

The foregoing instrument was acknowledged before this _____ day of _____, 2010, by _____

of the State Armory Board by authority duly given.

My commission expires: _____

Notary Public

THIS DEED, made and entered into this the _____ day of _____, 2010, by and between the CITY OF MORGANTOWN, a West Virginia municipal corporation, Grantor, and the STATE ARMORY BOARD a body corporate and agency of the State of West Virginia, Grantee.

WITNESSETH: that for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of all which is hereby acknowledged, the said Grantor, City of Morgantown, does hereby grant and convey, with covenants of Special Warranty, unto the said Grantee, State Armory Board, a parcel of land designated as being a part of Parcel 12 and a part of Parcel 20 on Tax Map 32A in the Sixth Ward of the City of Morgantown, Monongalia County, West Virginia, bounded on all sides by the City of Morgantown Municipal Airport, more particularly bounded and described as follows:

Beginning at a 5/8 inch rebar set this survey which bears S47°23'36"E, 144.59 feet from a 6 inch wood post found, being a corner of the Morgantown Municipal Airport; thence with the outer boundary of the Morgantown Municipal Airport S47°23'36"E, 1251.19 feet, to a 5/8 inch rebar set this survey; thence S45°06'45"W 1730.62 feet, passing a 5/8 inch rebar found at 510.62 feet, to a 5/8 inch rebar found; thence N44°53'15"W 830.00 feet, to a 5/8 inch rebar set; thence N45°06'45"E 300.00 feet to a 5/8 inch rebar set; thence N44°53'15"W 400.00 feet to a 5/8 inch rebar set; thence N45°06'45"E 340.00 feet to a 5/8 inch rebar set; thence N44°53'15"W 120.00 feet to a 5/8 inch rebar set; thence N45°06'45"E 293.00 feet to a 5/8 inch rebar set; thence S44°53'15"E 100.00 feet to a 5/8 inch rebar set; thence N45°06'45"E 742.92 feet, passing a 5/8 inch rebar found at 355.00 feet to the point of beginning, containing 46.50 acres, more or less, as surveyed by Capitol Engineering, Inc. and as shown on a plat attached hereto and made part of this description. The parcel of land hereinabove described as being a portion of that same real estate conveyed unto the City of Morgantown, by the following deeds of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 290 at Page 293 and Deed Book 365 at Page 392.

The Grantor hereby excepts unto itself all of the oil, gas, coal bed methane gas and other hydrocarbons which it may own within and under the property herein described. Grantor waives and releases its right to come upon the surface of the property for the exploration, drilling and procurement of oil, gas, coal bed methane gas and other hydrocarbons herein excepted.

Grantor will provide Grantee, by future document, with an easement through Grantor's realty that will allow Grantee ingress to and egress from the realty being transferred by this deed. The Grantor and Grantee shall agree upon the location of the roadway easement to be granted.

This conveyance is made subject to any and all exceptions, reservations, restrictions, easements, rights-of-way and conditions that may be contained in prior deeds of conveyance in this chain of title.

This conveyance shall also be subject to the following reservations that shall run with the land:

- (1) Federal Aviation Regulation (FAR) Part 77 (recodified as 14 Code of Federal Regulations (CFR) Part 77) surfaces must be adhered to relating to any building, structure, poles, trees, or other object on the property. The City/Grantor retains a right of entry onto the property conveyed to cut, remove, or lower any object, natural or otherwise, of a height in excess of 14 CFR Part 77 surfaces relating to the airport. This right shall include the right to mark or light as obstructions to air navigation, any and all objects that may at any time project or extend above said surfaces.
- (2) A notice, consistent with the requirements of 14 CFR Part 77 (FAA Form 7460-1), must be filed prior to constructing any facility, structure, or other item on the property.
- (3) The property shall not be used to create electrical interference with communication between the installation upon the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others, impair visibility in the vicinity of the airport, or endanger the landing, taking off, or maneuvering of aircraft.
- (4) The City/Grantor reserves for itself, its successors and assigns, an easement (right of flight) for the passage of aircraft in the airspace above the entire surface area of the land being conveyed. Furthermore, any noise inherent in the operation of any aircraft used for navigation shall be allowed.
- (5) The land being conveyed shall not be used to create a potential for attracting birds and other wildlife that may pose a hazard to aircraft in accordance with current FAA guidance.

The above-described real estate is assessed upon the Land Books of Monongalia County, West Virginia for the year 2009 in the Sixth Ward of the City of Morgantown as follows:

Part of:
City of Morgantown
Map 32A Parcel 12
92.16 Ac. SUR
WEST RUN

and

Part of:
City of Morgantown
Map 32A Parcel 20
69.40 Ac. SUR
WEST RUN

DECLARATION OF CONSIDERATION OR VALUE

The undersigned declares:

Under penalties of fine and imprisonment, as provided by law, that the total consideration paid for the property transferred by the document to which this declaration is appended is exempt from taxation for the following reason: This is a transfer by a political subdivision of the State to the State of West Virginia, by and through the State Armory Board, a agency of the State, and is therefore exempt from excise tax as provided by West Virginia Code Chapter 11, Article 22, Section 1.

WITNESS the following signature and seal:

CITY OF MORGANTOWN

By: _____

Title: City Manager

STATE OF WEST VIRGINIA,

COUNTY OF _____, TO-WIT:

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by _____, of the City of Morgantown, for and on behalf of the City of Morgantown by authority duly given.

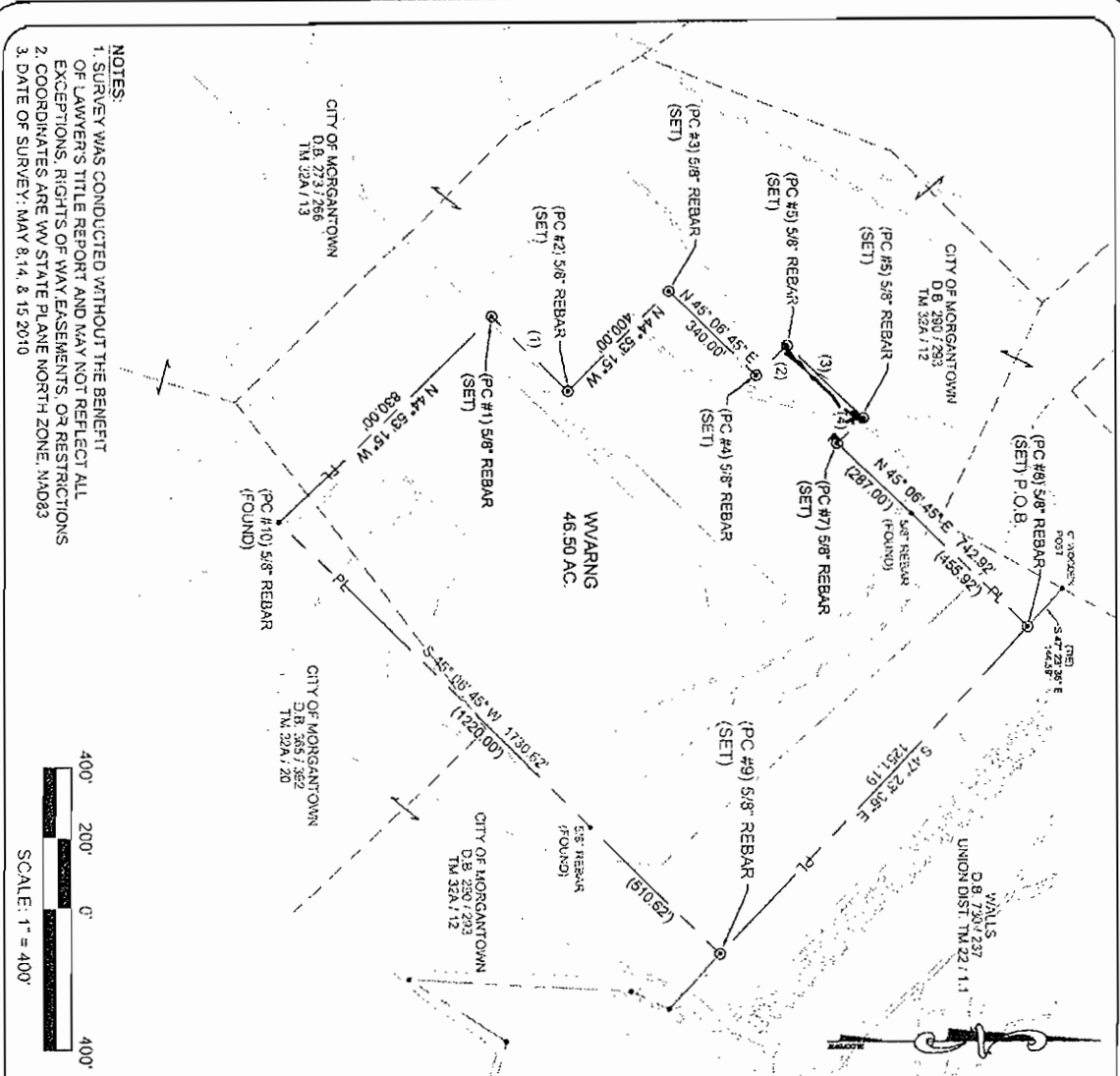
My commission expires: _____

Notary Public in and for said State and County

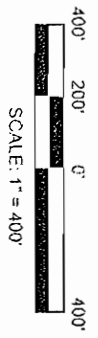
This instrument was prepared by:

Stephen R. Fanok
Attorney At Law
WV State Bar ID# 1158
389 Spruce Street
Morgantown, WV 26505

EXHIBIT



NOTES:
 1. SURVEY WAS CONDUCTED WITHOUT THE BENEFIT OF LAWYER'S TITLE REPORT AND MAY NOT REFLECT ALL EXCEPTIONS, RIGHTS OF WAY EASEMENTS, OR RESTRICTIONS
 2. COORDINATES ARE WV STATE PLANE NORTH ZONE, NAD83
 3. DATE OF SURVEY: MAY 8, 14, & 15 2010



LINE DESCRIPTION	DIRECTION	DISTANCE
LINE #1	N 45° 06' 45" E	300.00'
LINE #2	N 44° 53' 15" W	120.00'
LINE #3	N 45° 06' 45" E	293.00'
LINE #4	S 44° 53' 15" E	100.00'

POINT DESCRIPTION	NORTHING	EASTING
PC #1	416439.09	1852207.28
PC #2	416650.80	1852419.83
PC #3	416934.19	1852137.54
PC #4	417174.14	1852378.43
PC #5	417259.16	1852293.75
PC #6	417465.93	1852501.33
PC #7	417395.08	1852571.90
PC #8	418017.26	1852991.84
PC #9	417072.37	1854019.16
PC #10	415851.03	1852793.03
6" WOODEN POST	418017.26	1852991.84

DESCRIPTION: SIXTH WARD
 COUNTY: MONONGALIA
 STATE: WEST VIRGINIA
 PLAT OF SURVEY FOR:
 THE STATE OF WEST VIRGINIA
 NARRATIVE DESCRIPTION OF PLAT:
 46.50 ACRES MORE OR LESS TO BE CONVEYED FROM THE CITY OF MORGANTOWN TO THE STATE OF WEST VIRGINIA FOR THE USE AND BENEFIT OF THE ADJUTANT GENERAL'S DEPARTMENT.



Capital Engineering, Inc.
 1206 Kanawha Blvd, E., Suite 201
 Charleston, WV 25301
 Phone: (304) 344-0720
 Fax: (304) 344-0820

PLAT OF SURVEY
 STATE OF WEST VIRGINIA
 ADJUTANT GENERAL'S DEPARTMENT
 46.53 ACRES
 SIXTH WARD, MONONGALIA COUNTY

CRAIG H. WANLESS
 No. 2102
 STATE OF WEST VIRGINIA
 PROFESSIONAL SURVEYOR
 AUGUST 24 2010

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN IT AND THE MONONGALIA COUNTY DEVELOPMENT AUTHORITY REGARDING THE DEVELOPMENT OF THE MORGANTOWN AIRPORT BUSINESS PARK.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Intergovernmental Agreement hereto attached and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") entered into this ____ day of _____, 2010 by and between the Monongalia County Development Authority, Morgantown, Monongalia County, West Virginia ("MCDA") a West Virginia Public Corporation and the City of Morgantown, Morgantown, Monongalia County, West Virginia ("City"), a Municipal Corporation.

HISTORY AND BACKGROUND

The City is the owner and operator of the Morgantown Municipal Airport located in Morgantown, Monongalia County, West Virginia. The City has and is undertaking a concerted effort to bring more aviation and business activity to the Airport.

The City entered into negotiations with the State Armory Board, a body corporate and agency of the state of West Virginia regarding the possible relocation and expansion of the National Guard Unit in Morgantown, West Virginia, to property located at the Morgantown Municipal Airport owned by the City. Those negotiations included the development and construction of a new facility by the National Guard located at the Airport along with the expansion of the current services and activities of the Guard to be performed out of the new Readiness Center.

In addition to the new National Guard Readiness Center, the City, in conjunction with discussions, participation and planning with the MCDA, will develop a business park and Access Road at the Airport as part of the overall development of the Airport and the National Guard's new facility.

The Morgantown Airport Business Park will be developed by the City and the MCDA in accordance with this Agreement. This Agreement is entered into to outline the purpose, responsibilities, governance, development and operation of the Business Park and the Access Road.

WHEREFORE, The City and the MCDA enter into this Agreement for the purpose of development of the Access Road, Business Park, the new National Guard Readiness Center and the Airport area in general upon the terms and conditions set forth in this Agreement.

ARTICLE ONE DEFINITIONS

1.0 "Advance of Sale Proceeds" shall mean as it pertains to:

- A. MCDA: The One-Million, Four-Hundred and Eighty-Eight Thousand Dollars (\$1,488,000.00) plus the preliminary advance of One-Hundred Thousand Dollars (\$100,000.00) each by the MCDA and the Monongalia

County Commission, or a total of One-Million, Six-Hundred and Eight-Eight Thousand Dollars (\$1,688,000.00), all payable to the MCDA.

B. City of Morgantown: The Two-Million, Three-Hundred and Ten Thousand Dollars (\$2,310,000.00) plus the preliminary advance of One-Hundred Thousand Dollars (\$100,000.00), or a total of Two-Million, Four-Hundred and Ten Thousand Dollars (\$2,410,000.00), payable to the City of Morgantown.

- 1.1 "Agreement" shall mean this Intergovernmental Agreement including all schedules, exhibits, attachments and modifications.
- 1.2 "Access Road" shall mean the roadway to be constructed from State Route 857 to the Business Park and the Guard Property.
- 1.3 "Airport" shall mean the Morgantown Municipal Airport.
- 1.4 "Armory Property" shall mean the approximately 5.0 acres of land located at 1705 Mileground Road, Morgantown, Monongalia County, West Virginia, also known as the Battery B1-201st FA National Guard Armory facility.
- 1.5 "Business Park" shall mean the approximately 90 acres of ground located at the Airport currently owned by the City to be transferred to the MCDA for development by the MCDA of a high-quality, up-scale business park.
- 1.6 "City" shall mean the City of Morgantown, Morgantown, Monongalia County, West Virginia, a municipal corporation.
- 1.7 "Committee" shall mean the committee appointed by the MCDA and the City to oversee the acquisition, development, and operation of the Business Park and Access Road.
- 1.8 "DOH" shall mean the West Virginia Department of Transportation Division of Highways.
- 1.9 "FAA" shall mean the United States Federal Aviation Administration.
- 1.10 "Federal Grant" shall mean the One Million Nine Hundred Sixty Thousand Dollars (\$1,960,000) appropriation from Federal Transportation Allocation.
- 1.11 "Guard Property" shall mean the approximately 45 acre parcel of land located at the Airport owned by the City to be transferred to the State Armory Board for construction of a National Guard Readiness Center.
- 1.12 "MCDA" shall mean the Monongalia County Development Authority, Monongalia County, West Virginia, a public corporation.
- 1.13 "Net Proceeds" shall mean the net funds available from the sale or lease of lots within the Business Park after deduction of all costs and expenses of the sale or lease, the development and operation of the Business Park and any other necessary costs and expenses for the ongoing operation of the Business Park.
- 1.14 "Property Owners" shall mean any fee simple owner of property located within the Business Park.
- 1.15 "TSA" shall mean the Transportation Safety Administration.

ARTICLE TWO PROPERTY TRANSFER

- 2.0 The property encompassing the Business Park as set forth on the plat attached as Schedule 2.0 shall be developed and operated by the MCDA through the establishment of a business park committee. The Committee responsibilities, obligation and composition are more fully set forth in Article Three of this Agreement.
- 2.1 The property comprising the Business Park as set forth on the attached Schedule 2.0 shall as soon as reasonably possible after execution of this Agreement, and approval by the FAA, be transferred by the City to the MCDA. The MCDA shall hold and utilize the property for the development and operation of the Business Park as more specifically set forth in Articles Six and Seven of this Agreement.
- 2.2 The City shall as soon as is reasonably possible after execution of this Agreement transfer the property identified in the attached Schedule 2.2 to the MCDA for the sole purpose of developing and constructing the Access Road from State Route 857 to the Guard Property and the Business Park.
- 2.3 In conjunction with this Agreement, the City shall transfer the property identified in the attached Schedule 2.3 to the State Armory Board for the purpose of constructing and establishing the new National Guard Armory Readiness Center on the Guard Property. This transfer shall be in exchange for the current Armory Property located on the Mileground, Morgantown, Monongalia County, West Virginia and more particularly set forth in plat attached as Schedule 2.3 A.
- 2.4 Upon obtaining clear title to the Armory Property the City shall proceed to, as soon as reasonably practical, sell the Armory Property to the highest bidder (but for not less than the appraised fair market value of the property) upon terms and conditions as established by the City.
- 2.5 The proceeds received from the sale of the Armory Property shall be utilized for the development and construction of the Access Road, the Business Park, and the Airport. The use of these funds shall be in compliance with the provisions of Article Four and the Advance on Sale Proceeds Agreement, a copy of which is attached as Schedule 4.3 to this Agreement.
- 2.6 MCDA and City understand and agree that the Business Park, Guard Property, the Access Road are all integral parts of the overall project area for the Airport. This project area is more specifically set forth in the plat attached as schedule 2.6.

ARTICLE THREE BUSINESS PARK COMMITTEE

- 3.0 The development and construction of the Access Road and the development and operation of the Business Park shall be governed by a Committee as defined

above established by the MCDA. This Committee shall have the authority, responsibility, and obligations on behalf of the MCDA for the acquisition, development, operation and oversight of the Access Road and Business Park as set forth in this Agreement.

- 3.1 The initial Committee shall consist of five (5) members. Two (2) members shall be appointed by the MCDA, two (2) members appointed by the City and one (1) member shall be appointed by the Committee.
- 3.2 The MCDA and the City shall, as soon as possible, appoint the members to the Committee. Due to the importance and responsibilities of this Committee, the City and MCDA may, but shall not be required, appoint the Members of the Committee prior to the execution of this Agreement. In that event, the City and MCDA, by executing this Agreement, consent to, and affirm, those appointments.
- 3.3 The Committee shall develop and adopt policies and procedures for the responsibilities, obligations, requirements and operation of the Committee.
- 3.4 During the construction phase of the Access Road and Business Park, the Committee shall have authority over and responsibility for the following:
 - A. Review of and recommendation to the MCDA of all construction contracts for execution.
 - B. Review, authorization, and approval of all change orders, modifications, and expansion of any contract for construction of the Access Road and the Business Park.
 - C. Review and approval of all expenditures. The approval by the MCDA shall be required for any expenditure by the Committee, during the construction phase of the Access Road and Business Park, that is in excess of the amount set forth in the budget for the project considering the budget as a whole and all contingency line items. After completion of the Access Road and development of the Business Park, any expenditure by the Committee that is in excess of the budgeted amount for the project considering the Budget as a whole, and all contingency line items, shall require approval of the MCDA.
 - D. The approval of the purchase price, option contracts, sales contracts or other methods of acquiring the property necessary for the Access Road. The Committee shall approve all option and/or sales contracts for the property, and/or rights of way, necessary for the Access Road prior to approval and execution by the MCDA.
 - E. Approval of any lease, sale or other contract for property within the Business Park. The Committee shall require all sales, leases or other contracts for property within the Business Park to be at Fair Market Value.
 - F. Ensuring compliance with all aspects and requirements of the FAA, the TSA, and all other government agencies, rules and regulations.
 - G. The oversight, review and approval of all disbursements. The Committee shall be responsible for the oversight and approval of all disbursements of funds including operating expenses of the Business Park. MCDA and the City

understand and agree that any and all net proceeds from the sale or lease of property within the Business Park shall, after the payment of all expenses related to the sale or lease, including those set forth in this Agreement, be reinvested back into the Airport.

- H. The development, approval, and adoption of any and all rules, regulations, restrictive covenants, and limitations for the Business Park including, but not limited to aesthetics, building size, height, set backs, parking, exterior coverings, signage, etc. All rules, regulations, action, policies, and procedures shall comply with all applicable FAA, TSA, Federal, State, County, and Municipal requirements.
- 3.5 The Committee shall prepare and approve a budget and timetable for the acquisition, development and construction of the Access Road. The Committee shall also prepare and approve a budget and timetable for the acquisition, development and construction of the Business Park.
 - 3.6 The Committee shall annually prepare and approve an operating budget for the Business Park.
 - 3.7 All budgets shall be referred to the MCDA for final approval.

ARTICLE FOUR INITIAL FUNDING

- 4.0 The initial funding available for the Access Road and Business Park is estimated to be Six Million Seven Hundred Eighty-Two Thousand Dollars (\$6,782,000). The source of this funding has been identified as follows:
 - A. One Million Nine Hundred Sixty Thousand Dollars (\$1,960,000) from the Federal Grant to the project.
 - B. Four Million Three Hundred Thousand Dollars (\$4,300,000) from the estimated sale proceeds of the Armory Property after the land transfer with the State Armory Board.
 - C. Five Hundred Twenty-Two Thousand Dollars (\$522,000) from the City of Morgantown from Business and Occupation taxes to be generated on the construction on the Guard Property.
- 4.1 The estimated cost for the development and construction of the Access Road, extension of utilities to the Guard Property and the Business Park is Five Million Seven Hundred Fifty-Eight Thousand Dollars (\$5,758,000). These expenditures, and any applicable change orders are to be paid from the initial funding identified in Section 4.0 above for the project. These amounts are estimates and may vary once contracts are awarded, and considering subsequent change orders. However, since the proceeds from the sale of the Armory Property and the reinvestment of the Business & Occupation tax payments from the City on the construction of the Guard Property will not be immediately available, interim funding has been secured. The interim funding for this construction shall be provided as follows:

- A. One Million Nine Hundred and Sixty Thousand Dollars (\$1,960,000) in the form of a Federal Grant. This funding has been appropriated by the United States Congress and is currently held by the DOH.
 - B. Two Million Three Hundred Ten Thousand Dollars (\$2,310,000) to be contributed by the City as an Advance on Sale Proceeds of the Armory Property.
 - C. One Million Four Hundred Eighty-Eight Thousand Dollars (\$1,488,000) to be contributed by the MCDA in the form of an Advance on the Sale Proceeds of the Armory Property.
- 4.2 The City and MCDA understand and agree that the Advance on the Sale Proceeds provided by the MCDA is to be used as interim funding until the sale of the Armory Property is completed and shall be the last funds utilized in the Access Road development and construction. The City and MCDA shall use the funds provided by the City and the Federal Grant prior to using any of the proceeds from MCDA.
- 4.3 The Advance on the Sale Proceeds from the MCDA shall be evidenced by an Advance On Sale Proceeds Agreement which is attached as Schedule 4.3. The Advance on Sale Proceeds by MCDA shall be interest free and provide for repayment as more fully described in Section 4.4 of this Agreement.
- 4.4 The Advance on Sale Proceeds from MCDA shall be repaid upon the sale of the Armory Property. The repayment to the MCDA shall be disbursed from the closing proceeds of the sale after the payment of all costs and expenses associated with the sale of the Armory Property. The disbursement from the sale proceeds to repay the MCDA advance shall have first priority and shall be paid prior to disbursement of any other funds to any other parties including but not limited to the Advance on Sale Proceeds by the City.
- 4.5 After repayment of the advance by the MCDA, the Advance on Sale Proceeds by the City shall be repaid from the sale proceeds of the Armory Property. Any remaining proceeds shall, after the payment of all normal operating expenses and development costs of the Business Park, be delivered to the Airport.
- 4.6 In the event that the sale of the Armory Property is delayed for any reason, the Advance on Sale Proceeds from the MCDA shall be repaid from the proceeds of any sale or lease of property from within the Business Park after all expenses of the sale or lease. This repayment shall have priority over all other payments.
- 4.7 The City and MCDA agree that after the payment of the advance from the MCDA, the Advance on the Sale Proceeds by the City and the payment of all normal operating and development expenses of the Business Park that the net proceeds from the sale or lease of any property within the Business Park shall be delivered to the Airport. It being the purpose and intent of this provision that the City and MCDA acknowledge and agree that, per FAA requests and directives, all net proceeds, as defined in section 1.13 of this Agreement, from the sale or lease of any property of the Business Park shall be reinvested back into the Airport after the repayment of the MCDA and City advance on the sale proceeds.

- 4.8 The City and MCDA understand and agree that to fully develop the Business Park additional funding will be needed. MCDA shall not be required to provide additional funding for the full development of the Business Park unless expressly authorized and approved by the Board of Directors of MCDA. The purpose and intent of this provision is to recognize and agree to the reinvestment of the net proceeds from the sale or lease of any property within the Business Park back into the Business Park and Airport and not require the MCDA to provide any other additional funding unless expressly agreed to and approved by the MCDA.

ARTICLE FIVE ACCESS ROAD

- 5.0 MCDA shall oversee and coordinate the development and construction of the Access Road. The MCDA shall utilize the Committee for this purpose and the Committee shall have full authority to proceed and complete its responsibilities in relation to the Access Road. The development and construction of the Access Road shall be in accordance with the plat and survey of the Access Road attached as Schedule 5.0 and the budget as developed by the Committee.
- 5.1 The Committee shall, in accordance with architects, engineers, and legal counsel for the development of the Access Road, address all matters associated with the Access Road such as ownership of the right of way and Access Road, limited or controlled access to the Access Road, utility easements and rights of way and all other matters as may come before it pertaining to the Access Road and Business Park as the City and MCDA deem appropriate.
- 5.2 MCDA understands, agrees and accepts that once the Access Road is complete that the Access Road and right of way shall fully comply with the Federal Grant including, but not limited to, any requirements that the Access Road be owned by either the DOH or the City. MCDA agrees to cooperate fully to provide for the orderly and complete transfer of the Access Road right of way to the DOH or the City, in compliance with the Federal Grant, federal, state, or municipal requirements or directives.
- 5.3 The Committee shall take into consideration and provide for, and comply with, all FAA, TSA, and all other applicable government agency requests, and directives in the development and construction of the Access Road and the development and operation of the Business Park.
- 5.4 MCDA through the Committee shall be responsible for acquiring all necessary rights of way, easements, and approvals for development of the Access Road to the Business Park and the Guard Property. All acquisition costs and expenses shall be approved by the Committee in accordance with this Agreement.
- 5.5 MCDA shall enter into an extension agreement of the engineering and design contract with Alpha and Associates identifying with specificity the completion of the design engineering and construction of the Access Road including assistance on property and rights of way acquisitions as the Committee deems necessary.

- 5.6 MCDA shall enter into such other professional services contracts as required and negotiated by the Committee from time to time.

ARTICLE SIX DEVELOPMENT OF THE BUSINESS PARK

- 6.0 Upon obtaining the property identified in the attached Schedule 2.0 MCDA shall proceed with diligence to develop the Business Park.
- 6.1 The Business Park will be operated by MCDA through the Committee as set forth in Article Seven of this Agreement.
- 6.2 The Committee shall, in accordance with advice of the architects, engineers, consultants, and legal counsel, prepare and adopt a budget and timetable for development of the Business Park as a high-quality business park.
- 6.3 The Committee shall oversee the layout, design and construction of the Business Park within the budget as adopted and from time to time amended.
- 6.4 The Committee shall ensure compliance with all applicable FAA, TSA, Federal, State, County, and City laws, rules and regulations.
- 6.5 The Committee shall, through the use of architects, consultants, and legal counsel, be responsible for the completion of the Business Park development and acceptance of any completed contracts relating to the development of the Business Park. The Committee shall promote and develop the Business Park as a high-quality, up-scale, cohesive, well-coordinated Business Park.
- 6.6 The Committee shall establish and adopt restrictive covenants, rules and regulations, and polices and procedures for the development of the Business Park; operation of the Business Park; repairs and maintenance of the Business Park; sales and leases of lots within the Business Park and matters pertaining to the Access Road.

ARTICLE SEVEN OPERATION OF THE BUSINESS PARK

- 7.0 The operation of the Business Park shall be the responsibility of the MCDA through the Committee. City and MCDA understand and agree that while MCDA will own the Business Park, the Committee shall be responsible for the operation of the Business Park. City and MCDA understand, recognize, and agree that the ultimate responsibility for the Business Park shall rest jointly with the City and MCDA.
- 7.1 The Committee shall oversee the operation of the Business Park. This oversight shall carry the power and authority of the Committee on behalf of the City and MCDA to enforce the rules and regulations of the Business Park as from time to time are developed.

- 7.2 The Committee shall secure and oversee the operation of the Business Park including maintenance and repair of the infrastructure of the Business Park. The Committee shall provide recommendations to the MCDA and the City regarding the needs and necessities of the Business Park, including but not limited to staffing, capital improvements, modifications, alterations, etc.
- 7.3 The Committee shall annually prepare and adopt a budget for the operation of the Business Park. This annual budget shall be approved by the MCDA. The Committee shall be responsible for the operation of the Business Park and the performance of its duties within its budget.
- 7.4 The Committee shall provide a written report at least annually to the City and MCDA regarding the operation of the Business Park and the financial affairs of the Business Park. This written report shall, upon request of the City and/or the MCDA, be presented in person by the Chairman of the Committee.
- 7.5 The Committee shall establish Fair Market Value pricing for sales and leasing of lots within the Business Park; Business Park association fees, and/or assessments, if necessary; and maintain minutes and records of the Business Park in conjunction with the City as set forth below in Article Eight of this Agreement.
- 7.6 The Committee shall enforce and insure compliance with all FAA, TSA and other government agencies. The Committee shall adopt and enforce all necessary rules, regulation and obligations of the Business Park to ensure the operation of the Business Park does not interfere in any way with the operations of the Airport.
- 7.7 The Committee shall be responsible for the periodic review, amendment or modification of all restrictive covenants, rules, regulations, policies and procedures of the Business Park. The Committee shall have the power to amend and modify all rules, regulations, restrictive covenants, policies and procedures from time to time.
- 7.8 The Business Park Committee shall establish and adopt a policy regarding the payment of real estate sales and leasing commissions to third party brokers.
- 7.9 Appointees on the Committee of the MCDA, the City and the property owners shall be responsible for updating and keeping their respective bodies fully informed regarding the activities of the Business Park and the Committee.

ARTICLE EIGHT
ACCOUNTING AND RECORD KEEPING

- 8.0 The Business Park shall be operated on a stand alone basis and shall be required to be self sufficient based upon the revenue generated from sales and leases of lots within the Business Park and associated fees if any for the maintenance and repair of the infrastructure of the Business Park. As such the Business Park shall be accounted for as its own separate entity or department for internal reporting purposes.

- 8.1 The day to day financial and accounting services shall be provided for the MCDA by the City. The City shall establish and maintain, for accounting purposes, a separate set of accounts for the Business Park. The annual accounting and reporting of the development and operations of the Business Park shall be provided in cooperation with, and direction from, the independent auditors for the MCDA.
- 8.2 The City shall be responsible for and maintain all funds initially contributed by the City, MCDA, and the Federal Grant and all funds generated by any source after construction of the Access Road.
- 8.3 Subject to the provision of Section 8.5 below, the City shall upon request of the Committee pay from the funds set forth above in Article Four, all reviewed and approved invoices. The City and MCDA each reserve the right to pay, modify, question, challenge, or otherwise reject any invoice relating to the project notwithstanding any approval by the Committee.
- 8.4 In the event the City or MCDA reject or otherwise fail to approve any invoice submitted for payment by the Committee, the rejecting entity shall provide the Committee with the basis for the rejection and recommended action for removal of the objection.
- 8.5 Any invoice, request for payment, or other request for distribution of funds relating to acquisition, development, construction and operation of the Access Road and the Business Park that is in excess of the amount set forth in the budget for the project considering the budget as a whole and all contingency line items shall require the approval of the City and MCDA.
- 8.6 The City and MCDA agree to respond within twenty business days regarding any approval of expenditures required by this Agreement.

ARTICLE NINE MISCELLANEOUS

- 9.0 This Agreement contains the understanding and agreement of the parties regarding the development and operation of the Access Road and the Business Park. This Agreement may be amended from time to time by the parties. Any amendment, modification, or change to the provisions of this Agreement shall be in writing, signed by all of the parties.
- 9.1 The City and MCDA represent and warrant that by executing this Agreement each has the requisite power and authority to enter into this Agreement and that this Agreement has been duly authorized and approved by the City and MCDA.
- 9.2 In the event any aspect of this Agreement shall be determined to be unenforceable or contrary to governing laws, rules and regulations, or ordinances such provision shall be modified or stricken as the case may be to bring this Agreement into compliance. The modification or removal of any such provision shall not affect the enforceability of the remainder of this Agreement.

- 9.3 The City and the MCDA shall appoint a representative to act as the contact person for their respective organization with the Committee. This contact person may or may not also be a member of the Committee.
- 9.4 This Agreement shall at all times be governed by the laws of the state of West Virginia.
- 9.5 Time is of the essence in the performance of this Agreement.

MONONGALIA COUNTY
DEVELOPMENT AUTHORITY

CITY OF MORGANTOWN

By: David Yoder
Its: President

By: Dan Boroff
Its: City Manager

FACILITATING FEE SUPPORT FOR PEDESTRIAN INFRASTRUCTURE

Infrastructure Debt - No one wants, or has wanted, to pay for infrastructure especially since the Second World War. By being so resistant, we add to an infrastructure debt for future generations by not taking care of roads, streets, sidewalks, bridges, water mains, parks consistent with our generation's use of the facilities. We have a growing population with no discussion of limits in growth and yet much of what we use has been passed along to us by previous, smaller generations. "Sustainability" usually does not fit into present financial planning.

Pedestrian Infrastructure Plan Strategy – The old strategy "on the books" calls for property owner-by-property owner to install the piece of the sidewalk on the front of their property. The assumption has been that when all of the installations are complete, we will have a connecting sidewalk and all of the safety, economic and cultural benefits that would go with it.

The concept is an assumption and not a realistic possibility. Some walkways are used more than others and call for more community sharing to support them. Some places are geographically-challenged and require heavy outlays of capital to comply with the principle. Some parts of the city have been annexed without sidewalks, and they would have to start from scratch to implement sidewalks. Having thousands of property owners responsible for installing and maintaining sidewalks would be an administrative nightmare and would still not solve problems of need for connections where public property or reasons for other gaps in continuity would persist. (See Sidewalk Comparison sheet.)

The Pedestrian Safety Plan points out that if we want a walkable city, we need to have a community network of sidewalks as a minimum core of infrastructure. This would require sidewalks on a minimum of approximately 26% of the streets. To pay for this improvement over a 30+ year time period in strategic areas we would need to continue to use resources of public funds to install, maintain, and replace sidewalks and curbs and other pedestrian infrastructure as needed.

We have been gradually making priority installations of sidewalks on a few connector and corridor streets in recent years such as Stewart Street, Collins Ferry, Aspen, Beechurst, Burroughs, and now Grant. We do, however, have a very long way to go to make the city walkable and safe, transit friendly and more handicapped accessible. Fuel resources are becoming less and less, public financial resources are becoming tighter while needs for walkability to work, classes, school and shopping are increasing.

Other West Virginia Cities – West Virginia cities have approximately the same financial resource structures to use to address costs: B & O, property taxes; excise taxes on utilities, licenses and permits and fees. The fire service fee in Morgantown is the third highest source of income. To get beyond limitations in resources Huntington has enacted a \$3.00 weekly service fee, Charleston a \$2.00 weekly service fee, and Weirton a \$2.00 weekly service fee. During the recent

primary election, the City Council of Fairmont proposed a Transit fee which the voters passed by more than 60% and a paving fee which the voters approved by 51%. The paving fee did not pass because it did not meet the 60% state required majority for local excess levies. However, since the election the Mayor has said that the city council will proceed with the approval of the service fee on its own.

Initiative? Referendum? – According to our City Charter, an initiative cannot be placed on the ballot without a petition of 10% of the voters in the most recent election. This of course would be no problem. The real roadblock is that a Morgantown initiative cannot be used to “extend the budget or capital program or any ordinance of the city relating to the appropriation of money...” Otherwise we could have the option of voting on the fee as a citizen initiative next April on the vote-by-mail ballot.

A referendum is also not possible if it related to any “budget or capital program or any emergency ordinance or ordinance relating to appropriation of money...”

It All Comes Back to City Council Decision Making – In order to establish an on-going system of income from fees for a specified use (in this case, walkway infrastructure, street lights, and traffic calming), action must be completed by City Council.

If action could be taken beginning with the COW in August, and followed by three readings by Council, the action could be complete in October – six months before the next municipal election and sufficient time for some other matters to preempt voter focus and concern.

What Can Be Done to Reduce the Impact of Fee Costs? – Some time has passed to allow some persons who were concerned about the newly announced fee in January to adjust somewhat to the “sticker shock”. But because of the resistance expressed in January to the idea of a fee by some citizens and property owners, several changes have been suggested as a way to move forward on pedestrian infrastructure improvements. These include the following:

1. *Improving Fairness in the New Plan Fee Assessment:*

Fee Credits – 10 year fee credit for replaced or newly constructed sidewalks and curbs built in accordance with sections 913.06 and 915.01 of the city code since 2000.

Front Foot Assessment Cap (for large or unconventionally shaped lots): Building frontage based on building frontage plus a maximum of 40’ on each side of the building or a total of 150’ whichever is less.

2. *Implementation of Walkway, Walkway Lighting and Traffic Calming Fee:*

Incremental Implementation: FY 2012: 50 cents per front foot with a plan to move it to \$1.00 in the following fiscal year.

3. *Ordinances* - Revision of ordinances on sidewalk and curbs to incorporate emphasis on network connectivity and include provision for block decisions for neighborhood access sidewalk construction in non-network locations. Remove present more expensive universal requirement for all property owners.

Continue requirement of construction of sidewalks when new or renovated construction is completed. Construction meeting ordinance specifications for sidewalks and curbs would permit eligibility to apply for a 10 year fee credit.

If a waiver is given by the administration with the concurrence of the Pedestrian Safety Board, a property owner would required to comparable cost payment to the walkway, walkway lighting and traffic calming fund. The payment would also make the property eligible to receive a 10 year fee credit.

Establish by ordinance a separate, dedicated, Walkway, Walkway Lighting and Traffic Calming Fund (to be annually audited and publically reported as such)

5. *Grants and Other Resources* - Utilize TEA-21 Grants, Community Development Block Grants, TIFs and other situational sources of funding to move forward completion of Pedestrian Safety Plan projects whenever resources are available. (Bond use is discouraged due to compound interest expense.)



What elements do you think are most important to making it possible for you to support the fee?

If these adjustments are made to the Pedestrian Safety Plan, is there anything else that you believe would enable us move ahead with this plan for on-going pedestrian infrastructure upgrade?

Are there any other adjustments to the plan that you would like to see?

If changes are made to the plan and the fee implementations to your satisfaction, do you see you being able to vote for fee implementation late this summer?

PROPERTY OWNER-BASED SIDEWALK INSTALLATION vs. COMMUNITY NETWORK-BASED SIDEWALK INSTALLATION

- A Morgantown Comparison -

Issue	Owner-Based	Community-Based
1. Capital Expense to Individual Property Owners for Front Sidewalk Construction, Repair, Replacement Capital Expense to Individual Property Owners on Corner Properties for Sidewalk Construction, Repair, and Replacement	Several Thousands of \$ for Owner Several More Thousands of \$ for Owner	None None
2. Annualized Cost to Individual Owners for Construction, Repair, Replacement	None	Annual Fee (IRS Deductible for Class IV Properties)
3. Provides Funds to Pay for Sidewalks Adjacent to Public Areas (Parks, Schools, Water Towers, etc.)	None, Must be Taken from Other Uses	Included
4. On-Going Municipal Management Costs – Inspections, Assessments, Enforcement	High Management Costs	Low Management Costs
5. Continuity of Sidewalks (Lack of gaps due to vacant properties, Topography, legal variances granted by Council/Manager for decades, etc)	Difficult and Complex	Continuity
6. Legal History of Individual Waivers and Exemptions	Complex	Not an Issue
7. Continuity of Curbing (Lacks gaps which affect Storm Water Mgmt.)	Less Consistent	More Consistent
8. Symmetry of Sidewalks and Curbs	Difficult – even w/ standards	Symmetric
9. Engineering Efficiency/Approval	Inefficient, Fragmented	Efficient, Unified
10. Provision of Access to Destinations (Post Offices, Commerce, etc.)	Inconsistent	Planned, Consistent
11. Priority in Construction given to Access to Destinations	Dependent on Compliance	Dependent on Plan
12. Supports Family Confidence in Child Safety, Access to Schools	Lower	Higher
13. Increases Individual Property Values, Livability, Storm Water Control	Lower	Higher
14. Increases Value of Neighborhoods to New Families	Lower	Higher
15. Walkability of Area Contributes to Intergenerational Safety, Public Health, Recreation, Independence of Youth, and Access to Employment, Education and Transit	Less Consistent	More Consistent

Marti and Jenny 6/1/10

Both agree with the 10 year fee credit.

Marti is interested in having the County funding sources explored as a resource for sidewalk construction.

Jenny would like to have the number of feet utilized in the Front Foot Assessment Cap to be reviewed by the City Engineer.

Both agree that the incremental implementation plan should move from 50 cents in the first year to one dollar in the second year because of the need to meet public expectations for fee results.

Both would like to see the \$200,000 re-allocated in this year's budget utilized for a visible pedestrian infrastructure project such as the bridge between the rail-trail and Greenmont, the Suncrest connector between Baldwin Street and the Sellaro shopping plaza, the intercampus connector, etc. This would help support a better understanding of what a more walkable community could mean. This issue needs to be addressed after action is taken on the fee.

Both agree that sidewalks and traffic calming are important to future development. Jenny points out that it is important that traffic calming be highlighted because it would address the concerns of a somewhat different interest group within the citizenry as well. Street and curb repair continue to be important issues to be addressed by the annual budget.

Charlie and John 6/4/10

Charlie believes that the important thing is that the OPEB health benefit obligations (\$300,000 per year?) are going to make it very difficult in the future to do neighborhood improvements without a new source of dedicated revenue. The city is in a similar predicament as it was when it took steps to implement the fire service fee back in the 80's.

John thinks that it would be helpful if there could be a table on the fee information at the Greenmont picnic on June 26th 4-7 p.m.

Charlie believes that it would be helpful to have a list of Q and A's available for questions likely to be raised by persons in neighborhoods. For example, "when would the fee begin?" "what would be the average costs per household?" "why should we pay for sidewalks we won't walk on?" etc.

Both believe that the August COW would be a good time to begin the Council process. It will also be a meeting when WVU will be there and in a position to express support for the fee.

John believes that it is important that fee billing not take place at the same time as the fire service fee and property taxes.

When the fee is implemented, both believe that it is important that the first projects not be in Suncrest.

John believes there should be a five year kick-off implementation plan to get buy-in with the fee by doing a focal project in each section of town. Each project should have a sign stating that it was supported by the fee.

Charlie agrees that the Greenmont footbridge would be a good focal project and also recommends having a sidewalk with lighting on North Street between University Ave and Jones Ave. be another focal project in the Wiles Hill area.

Both agree that the key thing this fiscal year is to do a project that brings good PR to the pedestrian program

Both wondered is there is a source of fee revenue from billboards located inside the city.

To: Mike Stone
From: Brent O. Burton
Re: Furniture on Porches
Date: 7/23/10

Steve Fanok gave me a copy of Dan Boroff's e-mail to you. He suggested that I give you a copy of Judge Stone's Order, and my memorandum in regard to the Judge's ruling (See Attachment). If you have any questions, please contact me.

Brent O. Burton

Brent O. Burton

BOB
xc: Steve Fanok
Attachment

To: Terry Hough
From: Brent O. Burton
Re: Ron Smith- Appeal of municipal conviction for having a couch on his porch
Date: 1/17/01

On January 2, 2001, a hearing was held in Judge Stone's courtroom in regard to a citation issued to Mr. Ron Smith. Mr. Smith was convicted in municipal court and fined \$100.00 for refusing to obey a lawful order of a code official, BOCA National Property Maintenance Code Section 106.1. Mr. Smith refused an order to remove a couch that was located on his porch. The couch was indoor furniture, that was located outside on a covered but open porch. Judge Stone found the defendant not guilty of the charge. (See Attached Order dated January 3, 2001).

Facts of the case:

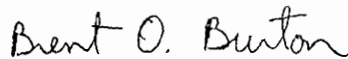
- The couch was indoor furniture that was located on a covered but open porch.
- The couch had been on the porch for approximately three years.
- The couch was in good condition, well maintained, and had no visible defects.
- The couch was brought to the City's attention by an anonymous call informing the City of a couch on a porch located on Mr. Smith's Street.
- There was not a specific complaint about this particular couch. When the City investigated the anonymous complaint, Mr. Smith's couch was the only one discovered on a porch on that street.
- Mr. Smith acknowledged that the couch was on the porch and that he refused to remove it when ordered to do so by the City. He did not believe that the City had the right to tell him to remove the couch.
- Mr. Smith said he had talked to his neighbors and they told him they had not complained about the couch.
- The City witnesses testified about the possible health hazards of having indoor furniture on a porch. The main concerns with such furniture are deterioration of the furniture, growth of molds and mold spores, and infestation by insects and rodents.
- The City acknowledged that the health problems with such furniture came to its attention as the City researched addressing the problem of furniture being removed from porches and burned in the streets in Morgantown.

Judges Ruling:

The Judge concluded that Mr. Smith was not guilty. The main factors that the Judge seemed to consider were the condition of the couch, the cleanliness of the area, and the fact the City could not prove that this specific couch is a health hazard. The Judge indicated that carpeting on a porch or other outside furniture could have the same general health hazards as this inside furniture that was located on the porch. There is not a prohibition against these items. The Judge seemed to suggest that it would be best to look

at each couch on a case by case basis, instead of having a blanket prohibition against having furniture on a porch. The City may not want to be in the position of telling persons what kind of furniture to have on their porches. The Judge indicated that relying on the broad language of the BOCA Property Maintenance Code for such a prohibition without a specific health hazard would not be upheld.

Judge Stone did indicate that he would uphold specific cases of removal of couches from porches if it was shown that a couch was soaked in moisture, covered with mold, or had evidence of infestation by rodents or insects. Mr. Smith's couch was in good repair and did not show these kinds of problems, so he is not required to follow the City's order to remove his couch from his porch.



Brent O. Burton

attachment

xc: Dan Boroff
Steve Fanok
Mike Stone

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
Division 1

CITY OF MORGANTOWN,
Plaintiff,

vs.

APPEAL NO. 00-M-AP-38

RON SMITH,
Defendant.

ORDER

On January 2, 2001, came the plaintiff, the City of Morgantown, by its attorney Brent O. Burton, and the defendant Ron Smith, pro se, for an appeal hearing set in the above-styled case with the Honorable Robert B. Stone presiding. After hearing testimony and argument from the parties, the Court finds the defendant **NOT GUILTY** of the charge of Failure to Obey a Lawful Order of a Code Official.

It is further **ORDERED** that the Circuit Clerk is to give the parties a copy of this Order after it is entered, return the total amount of the bond posted in this appeal to the defendant by mailing it to him at his address of 362 Overdale Street, Morgantown, WV 26505, and remove this case from this Court's docket.

Brent O. Burton

Brent O. Burton
Attorney for Plaintiff

ENTERED:

January 3, 2001
Robert B. Stone

JUDGE OF THE CIRCUIT COURT
Monongalia County, WV

AN ORDINANCE AMENDING SECTIONS 1751.04 AND 1751.05 OF THE CITY OF MORGANTOWN'S BUILDING AND HOUSING CODE BY ADDING LANGUAGE TO SUBSECTIONS 1751.04(a) and 1751.05(a) WHICH WILL REQUIRE RENTAL PROPERTY OWNERS, WHO RESIDE OUTSIDE OF MONONGALIA COUNTY, WEST VIRGINIA AND OWN RENTAL HOUSING WITHIN THE CITY OF MORGANTOWN, TO APPOINT A RESIDENT OF MONONGALIA COUNTY, WEST VIRGINIA, AS THE RENTAL PROPERTY OWNER'S AGENT FOR PURPOSES OF CONTACT AND NOTIFICATION OF MUNICIPAL CODE VIOLATIONS EXISTING AT THE RENTAL PROPERTY AND BEING CITED FOR CITY CODE VIOLATIONS EXISTING ON THE RENTAL PROPERTY.

WHEREAS, Morgantown Police Officers and Morgantown Rental Housing Inspectors do not have the legal authority to serve citations outside of Monongalia County for violations of the Morgantown Rental Housing Code or other articles of the Morgantown City Code upon rental housing owners who own rental property within Morgantown, but who reside outside of Monongalia County;

WHEREAS, the City of Morgantown's inability to serve citations upon Morgantown rental property owners, who reside outside of Monongalia County, not only results in unnecessary delays in correcting rental housing code violations but also hinders municipal prosecution for violations of the Morgantown City Code which occur within this City;

WHEREAS, it is the opinion of Morgantown City Council that the City of Morgantown's Building and Housing Code should be amended so as to require rental property owners, who are non-residents of Monongalia County, to appoint a resident of Monongalia County to serve as the rental property owner's agent for purposes of notification in case of emergencies, notification of any conditions of nonconformance for a rental property, and citations for violations of the Morgantown City Code.

NOW, THEREFORE, the City of Morgantown hereby ordains that Subsections 1757.04 (a) and 1751.05(a) of its Building and Housing Code are amended as follows (new matter underlined; deleted matter struck through);

1751.04 ILLEGAL CONDITIONS; PENALTY.

(a) After ninety days from the effective date of this section, it shall be illegal for any owner or operator to rent or offer for rent any dwelling units for use in whole or in part for human habitation unless a written application for a letter of compliance has been filed for such dwelling unit by said owner or operator or a valid letter of compliance has been issued to said owner or operator for such dwelling unit. If the owner of the rental property is a non-resident of Monongalia County, West Virginia, he or she will be required at the time he or she applies for a letter of compliance, to provide the name, address, and telephone number of an individual who resides in Monongalia County and

who will serve as the rental property owner's agent for purposes of contact and notification of municipal code violations existing at the rental property, and being cited for Morgantown City Code violations occurring on the rental property.

(b) It shall be illegal for any person to occupy or allow any other person to occupy any dwelling unit more than the time period indicated in the Housing Inspector's report for that dwelling unit or building, or after the Housing Inspector finds that vacation of the dwelling unit or building is necessary before abatement of a nonconformance can reasonably proceed.

(c) It shall be illegal for any person to permit a state of nonconformance to exist, under Sections 1751.06 to 1751.10, after the time set by the Housing Inspector or the Housing Board of Adjustments and Appeals for abating the nonconformance.

(d) Persons in violation under Sections 1751.06 to 1751.10 shall, as a separate offense, be subject to a penalty in accordance with the following schedule:

- (1) First conviction of any offense, a fine not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00)
- (2) Second conviction of the same offense, a fine not less than one hundred (\$100.00) nor more than five hundred (\$500.00)
- (3) Third conviction of the same offense, a fine not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00).
- (4) Each successive conviction for the same offense shall result in a mandatory fine of five hundred dollars (\$500.00).
- (5) Persons in violation of any section or subsection shall also be liable to revocation of the letter of compliance.

(e) The Housing Inspector, upon finding an apparent violation of this article, may institute appropriate proceedings as detailed in this article.

(f) Application for a hearing under Section 1751.11 shall stay the effective date of the enforcement of Sections 1751.08 and 1751.09.

(g) Persons in violation of Section 1751.17 shall be subject to a penalty in accordance with the following schedule:

- (1) Should the person be cited upon the City's initial discovery of said over-occupancy and the person is later convicted of said offense, the fine shall be two hundred dollars (\$200.00);
- (2) Should the person initially cited under subsection (g) (1) hereof not reduce the occupancy to a number allowed by this article within twenty days of the initial citation, the person shall be cited again for violation of Section 1751.17, and if later convicted of not reducing the occupancy within twenty days, shall be fined three hundred dollars (\$300.00). Each day after the foregoing twenty days that the dwelling

unit remains over occupied, in violation of Section 1751.17, shall be a separate citable offense subject to the fine imposed by this subsection.

- (h) No person other than the owner, operator, owner/operator's licensed contractor, or owner/operator's maintenance personnel when performing maintenance or other work upon the structure shall be on the roof, or any portion of a roof, of any structure, for any reason. Should owner or operator of a structure desire to convert a roof area so that it may be legally occupied by persons, a building permit from the City shall be required. When applying for the building permit, the owner, operator shall provide to the City a written document, prepared and signed by a structural engineer, stating that the proposed structural modification to the roof will result in the roof area in question meeting both live and dead loads established by the then current State Building Code for a deck or any elevated surface. Engineer or Architect signed and sealed construction plans shall be required. All these current State Building Code requirements regarding construction requirements, railing requirements, height requirements, fastening requirements, live and dead load requirements shall be met. A Certificate of Occupancy for the roof area shall be required before the roof area can be used or occupied. Any person who is on a roof for purposes other than those authorized in this subsection shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

1751.05 APPLICATION FOR LETTER OF COMPLIANCE; FILING DEADLINES; FEES.

- (a) Application for a letter of compliance shall be submitted in writing, on forms provided, to the Housing Inspector and shall contain at least:
- (1) The address or addresses of the dwelling;
 - (2) The number of dwelling units in the dwelling;
 - (3) The name, address and telephone number of:
 - A. The owner;
 - B. The agent, operator or other person to contact in case of emergency;
 - C. The person to be notified if a condition of nonconformance is found.

In all cases in which the rental property owner is a non-resident of Monongalia County, West Virginia, he or she must include in the application the name, address, and telephone number of a resident of Monongalia County, West Virginia, who shall be the agent of the owner for purposes of contact and notification of municipal code violations existing at the rental property and being cited for Morgantown City Code violations.

occurring on the rental property.

For each dwelling unit within the dwelling:

- (4) Whether the application is for an initial or a renewal letter of compliance;
 - (5) Number of off-street parking spaces available on site; and
 - (6) Dwelling unit identification or number.
- (b) Renewal applications shall be filed at least thirty days before the expiration of the existing letter of compliance.
- (c) Upon receiving an application for renewal of the letter of compliance, the Housing Inspector shall arrange to reinspect the dwelling unit.
- (d) Fees.
- (1) Application fee for rental housing units, exclusive of owner occupied housing units with roomers, dormitories and boarding and lodging house shall be twenty-five dollars (\$25.00) per dwelling unit; however, for those single structures containing six or more units, the applicaiton fee shall be fifteen dollars (\$15.00) per dwelling unit.
 - (2) Application fee for owner-occupied housing units with more than one roomer shall be fifteen dollars (\$15.00) per sleeping room.
 - (3) Application fee for boarding or lodging houses or dormitories shall be fifteen dollars (\$15.00) per sleeping room.
 - (4) Application fee for hearing before the Housing Board of Adjustments and Appeals shall be twenty dollars (\$20.00), with that fee being refunded should either body determine a citation to be baseless.
 - (5) Charge for missed appointments: twenty dollars (\$20.00) unless providing notification at least twenty-four hours prior to scheduled appointment.
 - (6) Emergency call out (after normal business hours): sixty dollars (\$60.00) for the first two hours; thereafter thirty dollars (\$30.00) per hour. A minimum charge of sixty dollars (\$60.00) will be due on any emergency call out.
 - (7) Court appearances: seventy five dollars (\$75.00) per hour; one hour minimum charge.
 - (8) Real estate inspections: seventy-five dollars (\$75.00) per hour; one hour minimum charge.

- (9) Duplicate copies of letter of compliance to the owner: one dollar (\$1.00) per copy.
- (10) Re-inspections: twenty-five dollars (\$25.00) per hour; one hour minimum charge.

This ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

Dan Boroff

From: BelCross Email [realtors@belcross.com]
Sent: Wednesday, August 18, 2010 11:56 AM
To: Dan Boroff
Cc: Mike Stone; Cheral Ann Skinner
Subject: Non-Resident Rental Property Owner Ordinance

Dan:

At the Housing Advisory Committee meeting we discussed the above referenced ordinance. During the discussion it came out that the problems are with vacant properties, not those that are occupied.

Occupied property has been handled with the threat of or actual condemnation and the situation is corrected as loss of rents affects the property owners ability to pay their mortgage, taxes, etc..

Questions that need further clarification are listed below:

- 1) How many citations have been issued to property owners who are non-residents of Monongalia County as compared to total citations.
- 2) How many citations for vacant properties? How many citations for occupied properties? Which citations have not been corrected in a timely manner?
- 3) Legal issues with appointing someone to act as your agent: power of attorney - cost to prepare and can the city force someone to do this; compensation - if someone is paid as an agent and is not an attorney, then they may be violation the real estate laws of West Virginia.
- 4) Who is being cited? Property owner or agent and if no corrections made who is fined or aressted.
- 5) How are citations written: to the property owner, to the agent, or to the property owner c/o agent.
- 6) Does the agent need a city business license if they receive compensation? Do they pay B & O tax on the compensation? Do they need to be licensed or registered with the State of West Virginia.
- 7) What happens if an owner travels internationally and cannot be reached even by the agent who has no authority other than to receive citation?
- 8) Effect on people who reside in neighboring counties and state but work in the Monongalia County area.
- 9) What if a real estate broker has an office in Monongalia County and functions as property manager or agent for a property owner but the broker of the real estate company does not live in Monongalia County.
- 10) What about a person who leaves area for employment, cannot sell property and becomes an accidental landlord?
- 11) Have we researched other college towns in other states to see how they handle the citation issue.

Bill Burton
304-296-7930

TO: Dan Boroff, City Manager
FROM: Steve Fanok, City Attorney
SUBJECT: Tailgating Permit
DATE: July 28, 2010

You have indicated that residents of the Suncrest area have requested that the City “regulate” tailgating during WVU football homegames. Suggested regulation would include requiring porta-john’s onsite, regulating the consumption of alcohol onsite, requiring the property owner to clear the area of litter and garbage within a specific time period after the game, and regulating noise and extensive partying onsite.

You have asked this office to research the City’s authority to prohibit the renting of game-day parking without the property owner first obtaining a permit from the City, and the City attaching to any such permit requirements (such as those listed above) that must be met by the property owner.

I have researched the issue and discussed the subject with various Departments Heads. Here is what the Finance Director, Planning Director, and Police Chief had to offer:

Finance Director (Denise White)

Denise White states that the State of West Virginia has provided all municipalities with a list of individual types of businesses that any such municipality may license. Those businesses are listed within the City of Morgantown’s Business and Taxation Code, and parking lots (either fulltime or temporary) are not listed as a business that the City has the authority to license. She is of the opinion, and I agree, that the City does not have the legal authority to *license* tailgating sites

Planning Director (Chris Fletcher)

Chris Fletcher states that the City’s Zoning Ordinance (Section 1331.07) does address Temporary Uses and permits them in all zoning districts of the City. 1331.07 lists examples of permitted temporary uses and the specific standards/rules that apply to all such uses. The Zoning Ordinance states that Temporary Use Permit Applications must be submitted to the City’s Planning Commission, which will hold a public hearing on the matter. The Planning Commission will thereafter make a recommendation as to whether a Temporary Use Permit should be issued by the City. The Zoning Ordinance authorizes the City Manager to issue Temporary Use Permits, in accordance with the requirements of Section 1331.07.

Chris states that he does not believe that the City has ever regulated temporary uses via Section 1331.07. As an example, he points out that each year various nonprofit groups sell Christmas trees from various locations throughout the City. He also states that various groups set up for temporary seasonal sales of various items/products throughout the City and to his knowledge, the City does not regulate their temporary use of realty.

He points out that he sees numerous problems associated with the City attempting to regulate tailgating through Section 1331.07. The first such problem is the sheer number of individual properties within the City that rent out parking spaces on football gamedays.

This would include numerous households that rent out 3 or 4 spaces in their yards, various nonprofit groups and churches within the City that rent out parking spaces on unused portions of their realty, and businesses within town that rent out parking spaces on their realty. Chris estimates that should the City begin treating gameday parking as a temporary use, it would be considering the “permitting” of *hundreds* of different locations; that all such locations would have to submit applications to the City and go through Planning Commission hearings; that in addition to game day parking, the City would have to regulate any such temporary parking use that occurs year-round in Morgantown; that once the City starts regulating game day parking as a temporary use, it will have to start looking for and regulating all temporary uses that occur within the City. Chris does not believe that there is adequate time to notify the property owners of their need to file applications with the City, and thereafter hold individual Planning Commission hearings for each property prior to the upcoming football season.

Chris does not feel comfortable with opening up the Temporary Use can of worms, and would prefer to utilize “advance efforts” to educate property owners, similar to how the City handled Grant Avenue partying. He asks that the City first attempt to contact and educate the involved property owners as to the law, past problems, and applicable ordinances/fines, before the City begins specific regulation of the use itself.

He also questioned the potential risk that the City could expose itself to by issuing a permit to an individual for the purpose of tailgating. He raises a good point by saying that if someone is injured at a tailgating event, the City, via the issuance of a permit, becomes a codefendant in a lawsuit ---- that blames the City for failing to properly oversee and control the “City sanctioned” activity.

Police Chief, Phil Scott

Phil states that tailgating really hasn’t been that big a problem for the Police Department in past years; that last year there was one incident in which tailgaters got out of control with their partying in a parking area and his officers had to get involved. He states that his officers use numerous portions of the City Code in policing tailgating areas, including, but not limited to:

- Article 509 Disorderly Conduct
- Article 523 Litter
- Article 527 Noise Control
- Article 528 *Nuisance Party Prohibited.*

Phil states that Article 528, which the City adopted in 2009 in response to Colonial Drive complaints, has been very successful in addressing such situations and was used last football season to cite the property owner and shut down the one football tailgating party that got out of control. He says that the ability to not only cite, but also, shut down the tailgating event is really all he needs to control such situations. He recommended that the City treat the tailgating season the same as it handled Grant Avenue parties, by educating the property owners in advance, handing out flyers to the property owners that not only explain the various problems that can arise with tailgating, but also, list the various violations that the property owner can be cited for if tailgating gets out of control. He believes that contacting the owners of known tailgating lots, in advance, and seeking their

cooperation would be the most efficient and successful means of handling the matter. He also pointed out that he believes that a part of educating the property owners should include reminding them of their potential individual liability exposure, should someone be injured as a result of tailgating on their realty.

The Views of the Legal Department

The Legal Department is of the opinion that if the City invokes a Permit Requirement for tailgating, it will have to treat all property owners the same (the single household with 3 cars in the yard to the business with 50 paved parking spaces). Furthermore, the permit process would most likely bring up for discussion the subject of alcohol and how it is to be treated; that is, is it allowed or not? It would be very difficult, if not impossible, to handle the matter through Section 1331.07 of the Zoning Ordinance and issue permits prior to this football season. I concur with the Police Chief and Planning Director and suggest that the City initiate an educational blitz of the involved property owners (every address that routinely rents out parking spaces on game day), and closely monitor what happens this football season. If the City's educational efforts are not successful, there would be enough time to revisit the Temporary Use permits for next football season.

If you are in agreement with City Administration using the educational process for this football season, please let me know and I will inform the Chief and Chris so we can get started. If you need additional information, I would suggest that the Police Chief, Chris, Denise and I meet with you to discuss.

A handwritten signature in black ink that reads "Steve". The signature is written in a cursive style with a large, looping initial "S" and a trailing flourish.

AN ORDINANCE AMENDING ARTICLE 1713 OF THE CITY OF MORGANTOWN'S BUILDING AND HOUSING CODE BY ADDING A NEW SECTION 1713.03 ADDRESSING BOARDING STANDARDS FOR STRUCTURES.

WHEREAS, there are numerous appendicies to the current national building code which were not adopted by the State of West Virginia when it adopted that national building code as the State Building Code of West Virginia;

WHEREAS, the State of West Virginia and its State Fire Commission have adopted rules and regulations that authorize municipalities, which have adopted the State Building Code, to also adopt any of the appendicies that are a part of the national building code that has been adopted by this State;

WHEREAS, the City of Morgantown is of the opinion that it should adopt Appendix A of the 2009 International Property Maintenance Code, the national building code which has been adopted as the State Building Code of West Virginia; and

NOW, THEREFORE, the City of Morgantown hereby ordains that Appendix A of the 2009 International Property Maintenance Code is hereby adopted as part of its State Building Code; that a new section 1713.03 is added to its Building and Housing Code which reads as follows:

1713.03 BOARDING STANDARDS.

- (a) There is hereby adopted, as part of the State Building Code, Appendix A of the 2009 International Property Maintenance Code, governing Boarding Standards for structures. The standards are as follows:
- (1) **General.** All windows and doors shall be boarded in an *approved* manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.
 - (2) **Boarding Sheet Material.** Boarding sheet material shall be minimum ½ inch (12.7 mm) thick wood structural panels complying with the *International Building Code*.
 - (3) **Boarding framing material.** Boarding framing material shall be minimum nominal 2-inch by 4-inch (51 mm by 102 mm) solid sawn lumber complying with the *International Building Code*.
 - (4) **Boarding fasteners.** Boarding fasteners shall be minimum 3/8 inch (9.5 mm) diameter carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the *International Building Code*.

- (5) **Boarding installation.** The boarding installation shall be in accordance with Figures A103.1(1) and A103.1(2) below and Sections 1713.03 (a) (6) through Section 1713.03 (a) (9) of this Article.
- (6) **Boarding sheet material.** The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.
- (7) **Windows.** The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The 2-inch by 4-inch (51 mm by 102 mm) strong back framing materials shall be cut minimum 2 inches (51 mm) wider than the window opening and shall be placed on the inside of the window opening 6 inches minimum above the bottom and below the top of the window opening. The framing and boarding shall be pre-drilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.
- (8) **Door walls.** The door opening shall be framed with minimum 2-inch by 4-inch (51 mm by 102 mm) framing material secured at the entire perimeter and vertical members at not more than 24 inches (610 mm) on center. Blocking shall also be secured at not more than 48 inches (1219 mm) on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches (152 mm) on center.
- (9) **Doors.** Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an *approved* manner.

FIGURE A103.1 (1)
(Boarding of Door or Window)

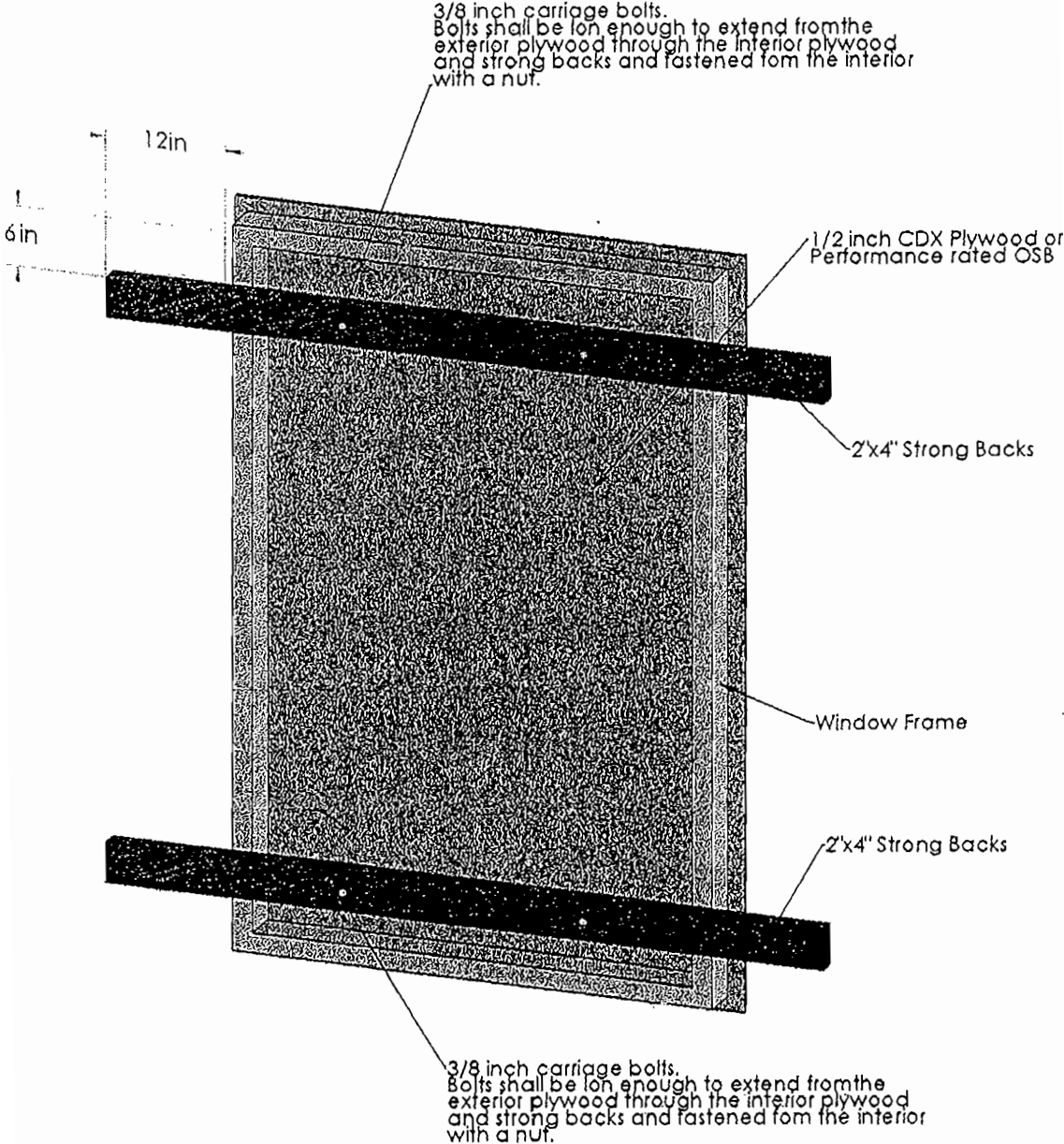
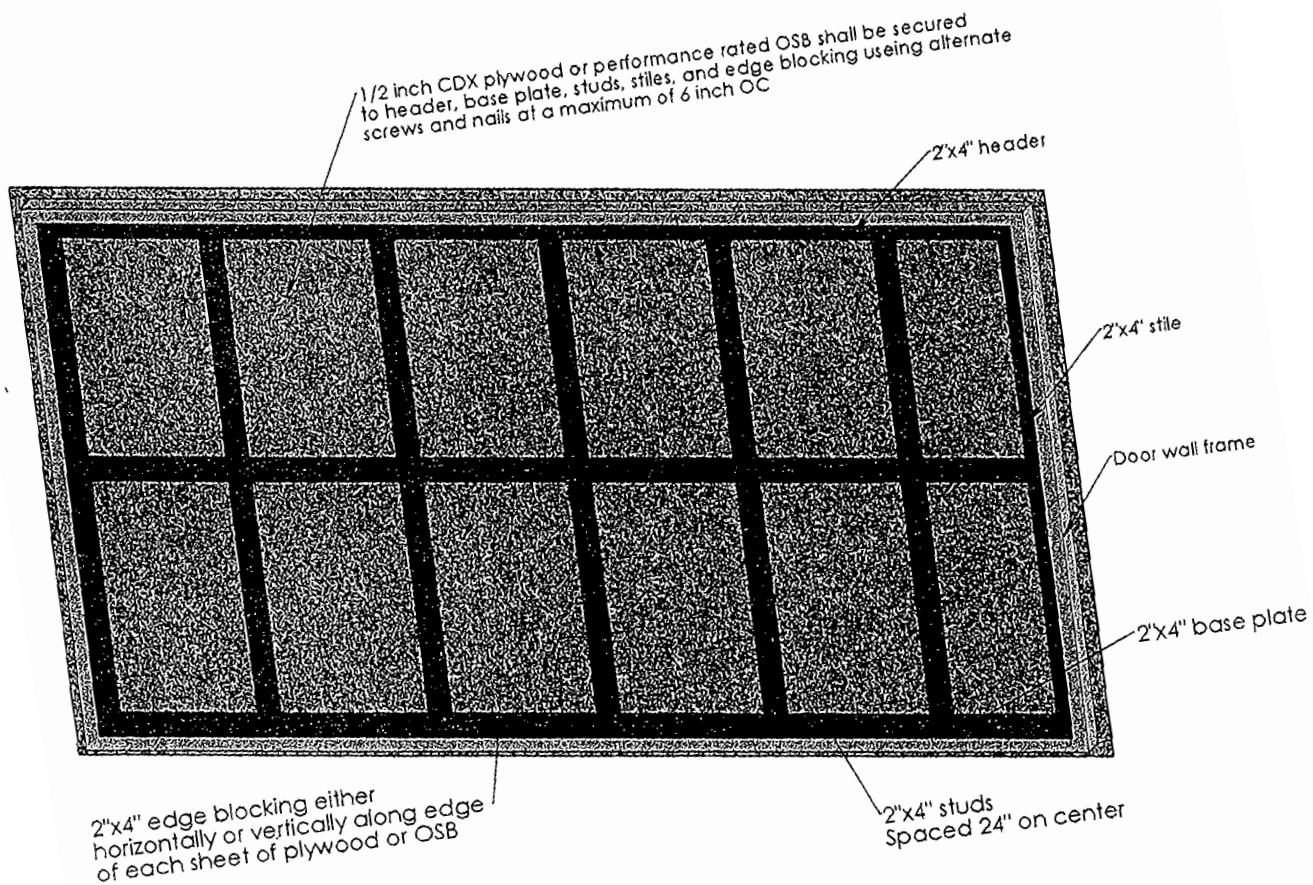


FIGURE A103.1(2)
(Boarding of Door Wall)



This Ordinance shall be effective upon date of adoption.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

MAYOR

CITY CLERK

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND APHELION AVIATION, LLC, LESSEE, IN WHICH OFFICE SPACE IS BEING LEASED AT THE MORGANTOWN MUNICIPAL AIRPORT FOR THE PURPOSE OF OPERATING A FLIGHT TRAINING CONCESSION.

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

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

RECORDED

RECORDED:

BASIC LAND AND ADVANCED FLIGHT TRAINING CONCESSION AGREEMENT

THIS AGREEMENT made and entered into this _____, _____, by and between the City of Morgantown, a municipal corporation, (hereinafter called “City”), and APHELION AVIATION, LLC (hereinafter called “Lessee”).

WITNESSETH:

WHEREAS, the “City” owns, controls and operates the Morgantown Municipal Airport; and

Whereas, the “City” encourages growth and development of aviation activities at the “Airport”, which activities include providing basic and advanced flight training opportunities to interested “Airport Customers”, and

Whereas, the “Lessee” is desirous of operating a flight training concession at the “Airport”.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained to be kept and performed, and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

ARTICLE 1, DEFINITIONS

The following words and phrases, wherever used in the Agreement shall, for the purpose of this Agreement, have the following meanings:

- (a) “Advanced” flight training shall mean any ground or in-flight training received in preparation for obtaining a pilot certificate or rating other than Private Pilot. These certificates or ratings include Commercial Pilot, Flight Instructor, and/or Instrument Rating.
- (b) “Airport” refers to the Morgantown Municipal Airport.
- (c) “Airport Customer” shall mean any person who utilizes the Airport for the purpose of receiving instruction in aircraft flight operations.
- (d) “Basic” flight training shall mean any ground or in-flight instruction, to include required solo flight time, received in preparation for obtaining a Private Pilot certificate
- (e) “FAA” means the Federal Aviation Administration of the United States, or any federal agencies succeeding to its jurisdiction.

- (f) "Leased Premises" shall mean an office located at 82 Hart Field Road, Suite 214, Morgantown, WV 26505. This space is to be used solely by the "Lessee" for the conduct of the "Lessee's" business.
- (g) "Property" shall include anything of material value that is real, personal, tangible, or intangible.
- (h) "Rules and Regulations" shall mean those lawful and reasonable rules and regulations which are not in conflict with this Agreement, promulgated by the "City" for the orderly use of the airport by both the airlines and other operators and users of the airport as the same may be amended, modified or supplemented from time to time.

ARTICLE II, GRANT OF CONCESSION

- 2.1 The "City" hereby grants to the "Lessee", subject to the terms and conditions hereinafter contained, the right to conduct and operate a flight training concession at the Airport. This shall not be construed to be an exclusive concession, and it is stipulated, agreed, and understood the "City" may grant concessions to other parties for the operation of a flight training program. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 as amended.
- 2.2 The "City" hereby agrees to allow the "Lessee" to use the "Leased Premises" as defined above for the purpose of operating a flight training program.
- 2.3 The "City" grants to the "Lessee" the rights of ingress and egress to and from the "Leased Premises", over airport roadways, including the use, without charge, of common use roadways, with such rights and license subject only to such reasonable rules and regulation as may be established by the "City" and subject to law.

ARTICLE III, TERM OF AGREEMENT

- 3.1 The term of this Agreement shall be for a period of three years commencing on _____, and ending on _____, unless terminated at an earlier date for any reason as set forth herein.

ARTICLE IV, FEES

- 4.1 In consideration for the rights and privileges granted by this Agreement, "Lessee" agrees to pay the "City" for the first year of this Agreement an annual rental payment of twelve hundred dollars (\$1,200.00), at a rate of one hundred dollars (\$100.00) per month. During the second and third years of this Agreement, the

annual rental shall be three thousand dollars (\$3,000.00) which shall be paid each month to the “City” at a rate of two hundred and fifty dollars (\$250.00).

- 4.2 It is agreed that a finance charge of one and one-half percent (1.5%) per month shall be added to any balance unpaid within thirty (30) days after the last day of the month to which it applies.
- 4.3 All sums, statements, and reports due hereunder shall be paid or made by delivery to the Airport Director, Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505.

ARTICLE V, INSTALLATION OF IMPROVEMENTS

- 5.1 The “Lessee” shall, without cost to the “City”, make all improvements and provide and install all trade fixtures as are necessary for the customary operation of its flight training concession.
- 5.2 The “Lessee” shall have the right, at its sole expense, to install and maintain approved signs advertising its business. Any signs identifying the “Lessee’s” operation must have the prior written approval of the “Airport Director”, as the City Representative, both as to size and location.
- 5.3 The “Lessee” shall not suffer or permit any mechanics or other liens to be levied or filed against the “City”. All improvements, equipment, fixtures, and interior decor constructed or installed by the “Lessee”, its agents, or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and rules and regulation. Any approval given by the “City” shall not constitute a representation or warranty as to such conformity; responsibility therefor shall at all times remain with the “Lessee”.
- 5.4 All structural improvements and alterations shall, upon termination of this Agreement, become the property of the “City’s” Municipal Airport.
- 5.5 The “Lessee” may place such furniture, property and equipment into the leased premises as is necessary for the conduct of its business. The “Lessee” shall have the right to remove the same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the “City” or restored to their original condition after such removal.
- 5.6 The “Lessee” shall not remove or demolish, in whole or in part, any improvements within the leased premises without the express prior written consent of the “City”, which consent may be conditioned upon the obligation of the “Lessee” to replace the same by an improvement specified in such consent. However, the “City” shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.

ARTICLE VI, PERFORMANCE AND SERVICE STANDARDS

- 6.1 The “**Lessee**” hereby covenants and agrees that it will furnish prompt and efficient service adequate to meet all reasonable demands for basic and advanced flight training at the airport of a fair, reasonable and nondiscriminatory basis, and to charge fair, reasonable and nondiscriminatory prices for each unit or sale of service on a basis substantially similar to that charged by it for similar services at airports of comparable size within the same general area. The “**Lessee**” may make reasonable discounts, rebates and other similar types of price reductions to purchasers on a nondiscriminatory basis.
- 6.2 The rental aircraft made available by the “**Lessee**” shall be a dual-equipped, single-engine, land, fixed wing aircraft fully certified as Airworthy by the FAA. The aircraft shall be maintained at the “**Lessee’s**” sole expense, in good operative order, free from known mechanical defects, current in all required inspections and in clean, neat, and attractive condition, inside and outside.
- 6.3 The “**Lessee**” shall provide, as a minimum, one (1) flight instructor properly certified, by the FAA, to give ground and in-flight instruction in single-engine, land, fixed wing aircraft under both Visual Flight Rules.
- 6.4 The “**Lessee**” shall provide publications and training aids, as necessary, to facilitate in the training process. These should include, but are not limited to, appropriate Federal Regulations, the Airman’s Information Manual, a cockpit mock-up, flight instruction videos, and equipment/charts for determining aircraft performance.
- 6.5 The “**Lessee**” shall provide a quiet, comfortable space, free of significant interruptions for use by the flight instructor and student in the course of conducting ground instruction, pre-flight briefings, post-flight briefings and self-study.
- 6.6 The “**Lessee’s**” employees shall be clean, neat in appearance, courteous and polite. The “**Lessee**” shall not employ any person or persons in or about the premises who shall conduct themselves in a loud, boisterous or otherwise improper manner. Upon notification by the “**Airport Director**” to the “**Lessee**”, in writing, that any person employed by the “**Lessee**” is, in its opinion, disorderly or otherwise unsatisfactory under this paragraph, the “**Lessee**” shall conduct a full investigation and if evidence is found that supports the **Airport Directors** claim, such person shall be subject to disciplinary action to include transfer or discharge from employment. The “**Lessee**” shall take all steps to remove, from airport employment, employees who participate in criminal acts on airport premises including, but not limited to, gambling, prostitution, possession or sale of illegal controlled substances, or acts of fraud or theft.

- 6.7 The “**Lessee**” shall abide by and be subject to all reasonable rules and regulations which are now, or may from time to time be promulgated by the “**City**” concerning management, operation or use of Airport facilities, or the safety of those using the same, and it shall abide by and be subject to all reasonable rules and regulations which are now, or may from time to time be promulgated by the FAA or the airport operator. The “**Lessee**” further agrees to maintain, use, and operate the leased premises in compliance with any and all present and future laws, ordinances, rules and regulations relating to public health, safety or welfare adopted by federal, state, local or other governmental bodies, or agencies, departments or officers thereof, and obtain all permits, at its sole expense, which may be necessary for the operation of its concession.
- 6.8 The “**Lessee**” covenants and agrees it will meet all expenses in connection with the use of its leased premises and be responsible for any taxes, permit fees, usage fees, license fees or assessments lawfully levied or assessed by any taxing authority against the business owned and operated by the “**Lessee**”, the leased premises, concession receipts, or as a result of the “**Lessee’s**” use and occupancy of airport premises or its operation at the airport.
- 6.9 The “**Lessee**” does hereby covenant and agree that:
- (a) no person on the grounds of race, color, creed, age, sex, religion, national origin or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said service or facilities.
 - (b) in the construction of any improvements on the leased premises and the furnishing of services thereon, no person on the grounds of race, color, creed, age, sex, religion, national origin or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.
 - (c) the “**Lessee**” shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
 - (d) it is the policy of the United States Department of Transportation that minority business enterprises, as defined in 49 CFR Part 23.5, shall have the maximum opportunity to participate in the performance of contracts such as covered by this Agreement. Therefore, the “**Lessee**” hereby assures no person shall be excluded from the participation in, be denied the benefits of, or otherwise be discriminated against in connection with the

award of any contract covered by 49 CFR Part 23 on the grounds of race, color, national origin, sex or handicap. The “Lessee” hereby assures it will include the foregoing clauses of this Section in all subcontracts and will cause subcontractors similarly to include these clauses in further subcontracts.

In the event of breach of any of the above nondiscrimination covenants, the “City” shall have the right to terminate this Agreement and hold the same as if this Agreement had never been made or issued, or, at the election of the “City” or the United States, either or both shall have the right to enforce the provisions of the Article.

- 6.10 The “Lessee” agrees the “City”, its duly authorized representatives or agents, may at any reasonable time enter into the assigned premises for the purpose of making any inspection deemed necessary in order to determine whether federal, state, or municipal rules and regulations and/or the covenants of this Agreement are being complied with, and to do any and all things which the “City” is obligated to do as set forth herein, or which may be deemed necessary for the general conduct and safe operation of the Airport.

ARTICLE VII, ASSIGNMENT

- 7.1 The “Lessee” shall not have the right to assign or transfer this Agreement or any rights hereunder without the prior written consent of the “City”.

ARTICLE VIII, INSURANCE AND LIMITATION OF LIABILITY

- 8.1 The “Lessee” covenants and agrees to secure and maintain during the term of this Agreement, the following insurance coverage. A Certificate of Insurance or copies of the individual insurance policies shall be provided to the “City”. Such policies shall contain a provision requiring at least thirty (30) days notice of cancellation which notice shall be given in writing to the “**Airport Management Office**”.
- (a) **Comprehensive General Public Liability Insurance** covering “Lessee’s” operations at the airport and its serving of airport customers with a combined single limit coverage of One Million (\$1,000,000.00) Dollars, naming the “City” as additional insured.
- (b) **Passenger/Aircraft Liability Insurance for Training and Rental Aircraft** in the minimum amount of one million dollars (\$1,000,000.00) per passenger and two million dollars (\$2,000,000.00) per occurrence.
- 8.2 The “Lessee” agrees to indemnify and hold the “City”, its agents, officers, representatives, and employees forever harmless from and against any and all claims, damages, judgements, attorneys fees, compensation, demands, or liability

for injuries to persons or property caused by, arising from or in connection with the use or occupancy by the **“Lessee”**, its agents and employees of the leased premises or arising from, out of, or in connection with the **“Lessee’s”** operations at the airport or arising directly or indirectly out of any acts of the **“Lessee”**, its agents, servants, guests, or business invites, or by reason of any act or omission of any such person; provided, however the **“Lessee”** shall not be liable for any injury, damage or loss occasioned by the negligence of the **“City”**, its agents or employees. The **“City”** shall give to the **“Lessee”** prompt and timely notice of any claim made or suit filed which in any way directly or indirectly, contingently or otherwise, affects or might affect the **“Lessee”**. Except for losses due to the negligent acts or omissions of the **“City”**, its agents or employees, the **“Lessee”** further covenants and agrees it will not hold the **“City”** or any of its agents or employees responsible for any loss or damage occasioned by fire, theft, rain, flood, windstorm, hail, vandalism or from another cause whatsoever, whether said cause be the direct, indirect, or merely a contributing factor in producing the loss or damage to any property of the **“Lessee”** that may be located or stored on the assigned premises or any other location at the airport, and the **“Lessee”** agrees that storage of all property on the leased premises or elsewhere at the airport shall be at the **“Lessee’s”** risk. The **“Lessee”** shall be responsible for all damage to persons or property caused by carelessness, negligence, or neglect on the **“Lessee’s”** part. The **“City”** shall not be liable for any loss/damage suffered by the **“Lessee”** arising out of the interruption or cessation of the business conducted by the **“Lessee”** under this Agreement.

ARTICLE IX, TERMINATION

- 9.1 It is mutually understood and agreed either party may terminate this Agreement with 60 days written notice to the other party. It is further understood and agreed in the event the Morgantown Municipal Airport were to cease operating as an air transportation facility, this Agreement would automatically terminate. It is further understood and agreed in the event the United States government or any of its agencies would assume control over the airport in time of war or national emergency for military use, then this Agreement would automatically abate during such period. The **“City”** agrees to give the **“Lessee”** prior notice as is feasible upon the occurrence of such an event.
- 9.2 The **“City”** may terminate this Agreement by giving the **“Lessee”** advance written notice, to be served as hereinafter provided, upon the happening of any one of the following events:
- (a) The making by the **“Lessee”** of a general assignment for the benefit of creditors;
 - (b) The filing by the **“Lessee”** of a voluntary petition in bankruptcy, or the institution of proceedings in bankruptcy against the **“Lessee”** and the

adjudication of the **“Lessee”** as a bankrupt pursuant to such proceedings;

- (c) The taking over of the **“Lessee”** or its assets by a court of competent jurisdiction;
- (d) The death (if an individual) or dissolution of the **“Lessee”** or the divestiture of the **“Lessee’s”** estate herein by other operation of law;
- (e) The failure of the **“Lessee”** to comply with and meet all the laws or rules and regulations issued by the Federal Aviation Administration or other governmental agency having jurisdiction;
- (f) The failure of the **“Lessee”** to keep and perform any of the covenants or agreements herein contained on the part of the **“Lessee”** to be kept and performed, provided the **“City”** shall first give the **“Lessee”** written notice to remedy such failure, and if the **“Lessee”** does not continue such failure within ten (10) days from receipt of such notice, the **“City”** may terminate this Agreement and the right to operate the concession.

9.3 If the **“Lessee”** shall fail to pay the fees and charges specified in this Agreement, or if any part thereof at any time be in arrears and unpaid, or if the **“Lessee”** shall fail to keep and perform and observe any of the covenants, agreements or conditions of this Agreement on the part of said **“Lessee”** to be kept, performed and observed, and if any of the aforesaid defaults are not remedied within ten (10) days after the same become due or if the **“Lessee”** shall die (if an individual), dissolve, cease doing business, abandon the premises, become insolvent or file a petition in bankruptcy, then it shall be lawful for the **“City”**, its successors or assigns to enter into the assigned premises, and thereupon this Agreement shall cease, terminate and be utterly void, without prejudice, however, to the right of the **“City”** to recover from the **“Lessee”** all minimum monthly payments due up to the time of such termination and all damages for breach of this Agreement. In the event of default by the **“Lessee”** of any of the terms of this Agreement, the **“Lessee”** shall pay to the **“City”** any costs and expenses, including reasonable attorneys fees, incurred by the **“City”** to enforce its rights under this Agreement or to recover damages for its breach.

9.4 No waiver of default by the **“City”** of any of the terms, covenants, or conditions hereof to be performed, kept and observed by the **“Lessee”** shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the **“Lessee”**. The acceptance of payment by the **“City”** for any period or periods after default of any one of the terms, covenants, and conditions herein contained to be performed, kept, and observed by the **“Lessee”** shall not be deemed a waiver of any right on the part of the **“City”** to terminate this Agreement due to failure by the **“Lessee”** to so perform, keep or observe any of the terms or conditions of this Agreement.

- 9.5 Should the assigned area be totally or partially destroyed by fire or other casualty, either party at its option, may terminate this Agreement by giving the other party written notice of the termination within fifteen (15) days after such destruction. In the event of termination, any payments made in advance by the “**Lessee**” shall be prorated on a daily basis and the portion attributable to the period subsequent to the destruction shall be refunded. Should the parties elect not to terminate following total or partial destruction, the “**Lessee**” shall restore the assigned area to a condition similar to that immediately prior to the destruction, at its sole expense. Any such restoration of the assigned area shall begin as soon as reasonably possible.

ARTICLE X, MISCELLANEOUS

- 10.1 The covenants, conditions and agreement made and entered into by the parties hereto are declared binding on their respective heirs, executors, administrators, successors and assigns.
- 10.2 Any notice or other communication to the “**City**” or the “**Lessee**” pursuant hereto shall be deemed validly given, served or delivered upon deposit in the United States Mail, certified and with proper postage and certification fee prepaid, addressed as follows:

To “**CITY**” City of Morgantown
 Airport Directors Office
 Morgantown Municipal Airport
 100 Hart Field Road
 Morgantown, West Virginia 26505

To “**LESSEE**” Aphelion Aviation, LLC
 122 Yates Avenue
 Grafton, West Virginia 26354
 Attention: John Byers

or to such other address as the addressee may designate by written notice to the other party, delivered in accordance with the provisions of this paragraph.

- 10.3 This Agreement is subject and subordinate to the provisions of any agreement made between the “**City**” and the United States Government relative to the operation, maintenance, or expansion of the airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the “**City**” for airport use, or the expenditure of federal funds for the improvement or development of the airport in accordance with the provisions of the Federal Aviation Act of 1958, the Airport and Airways Improvement Act of 1982, the Airport and Airway Development Act of 1970, the Airport and Airway Safety and Capacity Act of 1987, the Airport Safety and Capacity Expansion Act

of 1990, and the Aviation Noise and Capacity Act of 1990 as they have been amended from time to time.

In the event the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement or expansion of the airport, the “**Lessee**” agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to obtain such funds.

- 10.4 The “**City**” agrees it shall not during the term of this Agreement, grant to any other individual, firm, or corporation an on-site flight training concession under conditions or terms more favorable than those in this Agreement in respect to fees, time for payment, insurance, costs, privileges, and performance and service standards.
- 10.5 The parties do hereby covenant and warrant this Agreement contains the entire agreement between the “**City**” and the “**Lessee**” for the purposes set forth in the preamble hereinabove; that there are no claims, promises, representations or conditions not herein contained, either oral or written, which shall or may be charged or enforced or enforceable unless reduced to writing and signed by both of the parties hereto.
- 10.6 The Agreement shall be governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be executed by their proper officers the day and year first above written.

CITY OF MORGANTOWN

By: _____
City Manager

ATTEST:

City Clerk

APHELION AVIATION, LLC

By: _____
Chief Executive Officer

ATTEST:
