



November 14, 2012

Mr. Aaron Allred, Legislative Manager  
West Virginia Legislature  
Joint Committee on Government and Finance  
Building 1, Room E-132  
1900 Kanawha Blvd., E.  
Charleston, West Virginia 25305

*Re: West Virginia University notification pursuant to West Virginia Code §18B-19-13*

Dear Joint Committee on Government and Finance,

Pursuant to West Virginia Code § 18B-19-13 and appended for your review, please find a copy of the following documents: i) that certain Purchase and Sales Agreement, dated October 10, 2012, between ROBERT L. JOHNS, AS TRUSTEE OF THE BANKRUPTCY ESTATES OF AUGUSTA APARTMENTS, LLC; MCCOY 6, LLC; and THE SQUARE AT FALLING RUN, LLC (collectively, "SELLERS") and WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA UNIVERSITY, a state institution of higher education ("WVU"), and FIRST UNITED BANK AND TRUST; ii) that certain Agreement, dated October 23, 2012, between THE CITY OF MORGANTOWN, WEST VIRGINIA and MORGANTOWN BUILDING COMMISSION (collectively, "SELLERS") and WVU; iii) UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA order filed and entered on November 5, 2012 authorizing the sale of assets pursuant to 11 U.S.C. § 363(b), (f), and (m) and § 105(a), approving compromise litigation pursuant to Bankruptcy Rule 9019 and approving distribution of proceeds; and iv) a report setting forth a detailed summary of the terms of the acquisition, including the name of the property owner and agent involved in the sale, if any.

In the above-referenced Agreements, WVU agrees to purchase from SELLERS that certain real property located and situate in the City of Morgantown, Monongalia County, West Virginia, together with all buildings, improvements, easements, appurtenances and rights relating thereto, consisting of approximately twenty-five (25) acres, for the anticipated net purchase price of Five Million Three Hundred Forty Thousand Four Hundred Four Dollars (\$5,340,404.00).

Pursuant to West Virginia Code Section 18B-19-13(c), the attached copies of the agreements and report are being provided at least thirty (30) days prior to the consummation of this acquisition, and pursuant to subsection (f), your committee will meet and review the agreements within thirty (30) days of receipt.

In the event that you have any questions or need additional information, please feel free to contact me at 304.293.0394.

Respectfully,

A handwritten signature in blue ink that reads 'Shannon N. Mundell'. The signature is fluid and cursive, with the first name being the most prominent.

Shannon N. Mundell  
Director of Real Estate

West Virginia Higher Education Policy Commission

**Report to Joint Committee on Government & Finance**

**Acquisition of Parcels of Real Property, Morgantown, West Virginia**

by

**West Virginia University Board of Governors, on behalf of West Virginia University**

By that certain Purchase and Sales Agreement, dated October 10, 2012, West Virginia University Board of Governors, on behalf of West Virginia University (“WVU”), has agreed to purchase from Robert L. Johns, As Trustee of the Bankruptcy Estates of Augusta Apartments, LLC; McCoy 6, LLC and The Square at Falling Run, LLC (collectively, “Trustee”) and First United Bank & Trust, that certain real property located and situate in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, and more particularly described in Schedule 1.1 (“Property”); and by that certain Agreement, dated October 23, 2012, WVU has agreed to purchase from The City of Morgantown, West Virginia and Morgantown Building Commission (collectively, “City”) the Property for the anticipated net purchase price of Five Million Three Hundred Forty Thousand Four Hundred Four Dollars (\$5,340,404.00).

The loop of the Property is subject to a lease from the City of approximately 4 acres. This lease is subject to litigation by the following parties: i) First United Bank & Trust to establish its lien on the lease, ii) the Bankruptcy Trustee of The Square at Falling Run, LLC to characterize the lease as title to the underlying property, and iii) City to terminate the lease, which is in default. Following acquisition by WVU, City and WVU will terminate the lease, City will transfer the land to WVU, and the Bankruptcy Trustee will dismiss its litigation. Further, First United Bank & Trust will dismiss its claim to a lien on the lease.

As consideration for the Property and dismissal of the Trustee proceedings, WVU will pay the Trustee pursuant to Section 3.1 of the Agreement between WVU, Trustee and First United Bank & Trust. Attached is the Order entered on November 5, 2012 by the United States Bankruptcy Court for the Northern District Of West Virginia authorizing the sale of assets pursuant to 11 U.S.C. § 363(b), (f), and (m) and § 105(a), approving compromise litigation pursuant to Bankruptcy Rule 9019 and approving distribution of proceeds for the Property.

Pursuant to the Agreement between City and WVU, at closing \$100,000 will be payable to City, and after closing, WVU will undertake and diligently pursue the following development initiatives: i) Within 5 years, WVU will construct a project in the loop area of the Property for an anticipated construction cost of \$60,000,000; ii) WVU will develop approximately 20,000 square feet of dedicated retail, commercial and/or other rental space in one or more of the following areas: the loop area of the Property, WVU’s College Park area, the Falling Run Road area, and/or the Sunnyside area; iii) WVU will assist in soliciting one or more grants in an aggregate amount of not less than \$1,000,000 from various governmental agencies and third parties to support the expansion of the Morgantown Municipal Airport, assist City in the development, sale or lease of a 13-acre tract to be obtained by the City from the Monongalia County Development Authority; and iv) WVU will grant an easement to the Morgantown Housing Authority in exchange for the reconveyance and release by City of that certain right of way involving the Property. Notwithstanding any provisions above or in any other agreement to the contrary, City confirms and agrees that if WVU fails to perform any or all the development initiatives, City’s sole and exclusive remedy shall be limited to receipt of the 2026 payment.

On August 31, 2026, WVU will pay \$4,200,000 to City, less the following credits:

- i) All Business & Occupation (“B&O”) taxes paid to City prior to 2026 for the construction expenditures on the loop area of the Property in excess of \$30,000,000;
- ii) All B&O taxes paid to City arising from and directly associated with any construction, retail, commercial, rental space in the loop area of the Property, WVU’s College Park area, the Falling Run Road area, and the Sunnyside area; and
- iii) All airport grant funds received as a result of WVU’s efforts.

Additionally, First United Bank & Trust owns a TIF Bond supported by the Falling Run TIF District, and WVU will guarantee payment to the TIF Bond Trustee up to \$120,000 per year. In the event that WVU acquires any additional real property in this TIF District, the maximum annual payment may increase.

This acquisition has been approved by the West Virginia University Board of Governors and the United States Bankruptcy Court for the Northern District of West Virginia, and is subject to approval by the West Virginia Attorney General and West Virginia Higher Education Policy Commission.

Upon receipt of all approvals, the closing of such sale will occur on or before December 31, 2012. No agent was involved in this acquisition.



# Summary

PARTNERS	PAYMENTS	CREDITS	NET COST
First United Bank & Trust	\$4,925,000		\$4,925,000
Estimated Closing Costs	\$325,000		\$325,000
City Building Commission - 2012	\$100,000		\$100,000
City Building Commission - 2026	\$4,200,000		\$4,200,000
TIF Bonds \$120,000 - 22 Years (PV)(Max)	\$1,690,404		\$1,690,404
Proceeds of Sale & ROW to City		(\$1,700,000)	(\$1,700,000)
B&O Tax Credit 2012-2026		(\$4,200,000)	(\$4,200,000)
<b>Total</b>	<b>\$11,240,404</b>	<b>(\$5,900,000)</b>	<b><u>\$5,340,404</u></b>



**PURCHASE AGREEMENT**

**By and Among**

**ROBERT L. JOHNS, AS TRUSTEE OF THE BANKRUPTCY  
ESTATES OF AUGUSTA APARTMENTS, LLC; MCCOY 6, LLC and THE SQUARE  
AT FALLING RUN, LLC, AS SELLERS,**

**And**

**WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST  
VIRGINIA UNIVERSITY, A STATE INSTITUTION OF HIGHER EDUCATION, AS  
PURCHASER,**

**And**

**FIRST UNITED BANK AND TRUST**

**Dated as of October 10, 2012**

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“Agreement”), dated as of October 10, 2012, by and among ROBERT L. JOHNS, AS TRUSTEE OF EACH OF THE BANKRUPTCY ESTATES OF AUGUSTA APARTMENTS, LLC (in such capacity hereinafter referred to as “Augusta Seller”), MCCOY 6, LLC (in such capacity hereinafter referred to as “McCoy 6 Seller”), and THE SQUARE AT FALLING RUN, LLC (in such capacity hereinafter referred to as “SFR Seller”), each a West Virginia limited liability company (Augusta Seller, McCoy 6 and SFR Seller are hereinafter sometimes referred to individually as “Seller” and collectively as “Sellers”), WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY, A STATE INSTITUTION OF HIGHER EDUCATION (“Purchaser”), and FIRST UNITED BANK AND TRUST (“Bank”).

### RECITALS:

A. On February 19, 2010, Augusta Apartments, LLC (“Augusta”) filed a petition under Chapter 11 of the Bankruptcy Code (Case No. 10-BK-00303) (the “Augusta Bankruptcy Case”) in the United States Bankruptcy Court for the Northern District of West Virginia (the “Bankruptcy Court”), and on July 21, 2010, Augusta Seller was appointed as the Trustee of the bankruptcy estate of Augusta (hereinafter, the “Augusta Estate”). On July 17, 2012, the Augusta Bankruptcy Case was converted to a case under Chapter 7 of the Bankruptcy Code, with Augusta Seller remaining as the Trustee of the Augusta Bankruptcy Estate.

B. On February 19, 2009, McCoy 6, LLC (“McCoy 6”) filed a petition under Chapter 11 of the Bankruptcy Code (Case No. 09-BK-00304) (the “McCoy 6 Bankruptcy Case”) in the Bankruptcy Court, and on July 21, 2010, Seller was appointed as the Trustee of the bankruptcy estate of McCoy 6 (hereinafter, the “McCoy 6 Estate”). On June 25, 2012, the



McCoy 6 Bankruptcy Case was converted to a case under Chapter 7 of the Bankruptcy Code, with McCoy 6 Seller remaining as the Trustee of the McCoy 6 Bankruptcy Estate.

C. On April 25, 2011, Bank filed an involuntary petition under Chapter 7 of the Bankruptcy Code against The Square at Falling Run, LLC (“SFR”) (Case No. 1:11-bk-00753) (the “SFR Bankruptcy Case”; the Augusta Bankruptcy Case, the McCoy 6 Bankruptcy Case and the SFR Bankruptcy Case are hereinafter collectively referred to as the “Bankruptcy Cases”) in the Bankruptcy Court, and on July 5, 2011, SFR Seller was appointed as Trustee for the bankruptcy estate of SFR (herein, the “SFR Estate”; the Augusta Estate, the McCoy 6 Estate and the SFR Estate are hereinafter collectively referred to as the “Estates”). On April 30, 2012, the Bankruptcy Court entered an order for relief in the SFR Bankruptcy Case.

D. The Augusta Estate owns a certain unimproved parcel or lot located in the City of Morgantown, West Virginia, which real property is more particularly described on Schedule 1.1(a) attached hereto, subject to the Bank’s lien.

E. The McCoy 6 Estate owns certain parcels or lots located in the City of Morgantown, which real property is more particularly described on Schedule 1.1(b) attached hereto, subject to the Bank’s liens.

F. There is currently pending in the Bankruptcy Court in the SFR Bankruptcy Case an adversary proceeding (Adversary Proceeding 1:11-ap-00060) (the “SFR Adversary Proceeding”) with respect to that certain Ground Lease (the “SFR Lease”) dated April 17, 2008 between the Morgantown Building Commission (the “Building Commission”), the City of Morgantown (the “City”) and SFR, in which the City asserts that the SFR Lease may be terminated and that the Bank’s lien against the SFR Lease is void, voidable or unenforceable.

(The liens of the Bank against the property of the Augusta Estate, the McCoy Estate and the SFR Lease being hereinafter collectively referred to as the “Bank’s Liens”).

G. McCoy 6 Seller is a party plaintiff in two lawsuits involving the City and various City officials pending in the United States District Court for the Northern District of West Virginia (Civil Action Numbers 1:10CV54 and 1:10CV55) (collectively, the “City Lawsuit”).

H. McCoy 6 Seller is a party plaintiff in two adversary proceedings against Bank and other parties (Adversary Proceedings 1:11-ap-00071 and 1:11-ap-00072) pending in the McCoy 6 Bankruptcy Case, in which the McCoy 6 Seller seeks to avoid certain transactions and recover proceeds of those transactions from, *inter alia*, Bank (“§ 548 Lawsuits”).

I. Purchaser wishes to acquire from the Augusta Seller, McCoy 6 Seller and SFR Seller, respectively, and each of such Sellers wishes to sell to Purchaser, the Augusta property, McCoy 6 property and all of SFR Seller’s right, title and interest in and to the SFR leasehold property (as the case may be) described above, including all of Sellers’ and the respective Estates’ interests in such real property and all improvements thereon, together with all such other assets, property and rights of the Estates and Sellers relating to such real property and the improvements thereon, as hereinafter more particularly described, including, but not limited to, all of the personal property located on such real property, and all rights of the respective Estates and Sellers in and to any leases relating to such real property, upon the terms and conditions provided herein.

J. In connection with the transactions described above, SFR Seller, the City, the Building Commission and Bank are willing to settle and otherwise dismiss the SFR Adversary Proceeding, and McCoy 6 Seller is willing to settle and otherwise dismiss all claims of Seller



against all defendants in the City Lawsuit, subject to the terms and conditions more particularly set forth herein.

K. Bank is a party to this Agreement for purposes of evidencing its agreement with the terms hereof, including its agreement (i) to support and not object to the transactions described herein and to cooperate with Purchaser and Sellers in connection with all of such transactions; (ii) not to bid against Purchaser any of the indebtedness owed to Bank by the Estates in any auction held in connection with any of the Bankruptcy Cases, (iii) to settle and otherwise dismiss the SFR Adversary Proceeding, subject to the terms hereinafter more particularly set forth, and (iv) to settle McCoy 6 Estate's claims against Bank in the § 548 Lawsuits, subject to the terms hereinafter more particularly set forth.

NOW, THEREFORE, in consideration of the premises and mutual covenants, agreements, representations and warranties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### **SALE OF ASSETS**

1.1 Assets to be Transferred. Subject to the terms and conditions set forth in this Agreement, at the Closing (as defined in Section 4.1), each of the respective Sellers agrees to sell, convey, transfer, assign and deliver to Purchaser, by apt and proper special warranty deeds, bills of sale, assignments and other instruments of conveyance and transfer satisfactory to Purchaser and its counsel, and Purchaser agrees to purchase from such Seller, the following described assets, properties and rights (collectively the "Assets"):

(a) Augusta Seller shall sell, convey, transfer, assign and deliver to Purchaser all of the Augusta Estate's right, title and interest in and to that certain unimproved parcel or tract of land, easements, rights of way and other interests and rights set forth and described on Schedule 1.1(a) attached hereto (collectively, the "Augusta Real Property");

(b) McCoy 6 Seller shall sell, convey, transfer, assign and deliver to Purchaser all of the McCoy 6 Estate's right, title and interest in and to those certain parcels or tracts of land, easements, rights of way and other interests and rights set forth and described on Schedule 1.1(b) attached hereto, together with all structures, parking facilities and lots, and any other improvements located thereon or attached thereto (collectively, the "McCoy 6 Property"), and shall also sell, convey, transfer and deliver to Purchaser any right, title and interest McCoy 6 Estate may have in any of the real property subject to the SFR Lease;

(c) SFR Seller shall sell, convey, transfer, assign and deliver to Purchaser all of the SFR Estate's right, title and interest in and to the SFR Lease and the property subject thereto, which property is more particularly described in Schedule 1.1(c) hereto, together with all structures, parking facilities and lots, and any other improvements located thereon or attached thereto (collectively, the "SFR Property"; the SFR Property, the Augusta Property and the McCoy 6 Property are hereinafter collectively referred to as the "Real Property");

(d) all of their respective Estate's right, title and interest in and to all furniture, furnishings, machinery, chattels, tools, equipment, parts, supplies, signs, cabinets, air conditioning and heating systems, lighting fixtures, floor, wall and counter fixtures, and all other fixtures of every other kind and nature, hardware, spare and replacement parts, and all other



tangible personal property located on the Real Property, excepting titled automobiles and equipment attached thereto (collectively, the “Tangible Personal Property”);

(e) all of their respective Estate’s right, title and interest in and to all leases and other rental contracts, if any, to which such Estate or such Seller is a party relating to the Real Property (collectively, the “Leases”), from and after the date of Closing (as of the date hereof, all residential structures on the Real Property are vacant and not subject to any leases or rental contracts);

(f) all of their respective Estate’s right, title and interest in and to all permits, licenses, certificates, orders and other governmental authorizations, to the extent such permits, licenses, certificates, orders and authorizations are transferable, relating to and necessary in connection with the operation of the Assets, including, without limitation, those permits, licenses, certificates, orders and authorizations set forth and described on Schedule 1.1(f) attached hereto;

(g) all of their respective Estate’s right, title and interest in and to all plans and specifications and architectural and engineering drawings, site plans, operating manuals, maintenance manuals and records, environmental studies and reports relating to the Assets (provided, however, each Seller shall convey to Purchaser at Closing all original Leases and deeds) (collectively, the “Books and Records”), and to all trade secrets, trade names, service names, service marks, logos, goodwill, and computer software relating to the Assets; and

(h) all of their respective Estate’s right, title and interest in and to all security deposits relating to the ownership or use of any of the Assets.

1.2 Excluded Assets. The parties hereto agree that the Assets purchased hereunder shall exclude (a) all of Sellers' respective accounts receivable relating to the Assets for periods prior to Closing; (b) any and all of Sellers' respective right, title and interest in and to any maintenance, service, supply, equipment rental and other contracts (other than the Leases); and (c) any claims or rights of Sellers arising under the Federal Bankruptcy Code.

1.3 Title to Assets.

(a) At Closing, each of the Sellers hereby agrees that he shall convey, transfer and assign to Purchaser the Real Property owned by such Seller by apt and proper special warranty deeds in fee simple or by assignment of lease (as the case may be), with good and marketable title such as will be insurable by a reputable title insurance company at its regular rates, free and clear of all liens, security interests, easements, claims, encumbrances and other restrictions (including, but not limited to, those liens, security interests, easements, claims, encumbrances and other restrictions listed as item numbers 1 through 29 on Schedule 1.3 attached hereto), except: (i) the lien for real estate property taxes for the year 2013; and (ii) such easements, restrictions and other exceptions to title as shall be reasonably acceptable to Purchaser; and, provided, that SFR Seller makes no representations or warranties herein with respect to the SFR Property and Purchaser shall not be entitled to require that title to the SFR Property is insurable. The above-described title, subject to the qualifications hereinabove provided, is hereinafter referred to as "Good and Marketable Title to Real Property."

(b) Each of the Sellers further agrees to convey, transfer and assign to Purchaser at Closing all other Assets owned by such Seller other than the Real Property (all of such other Assets being herein collectively called the "Personal Property") by apt and proper

bills of sale, assignments (including acceptances and acknowledgments thereof), endorsements and other instruments of conveyance and transfer, in form and substance acceptable to Purchaser and its counsel, as shall be necessary to transfer and convey good and marketable title to all such Personal Property, free and clear of all liens, security interests, claims, encumbrances and other restrictions. The above-described title to such Personal Property is hereinafter referred to as “Good Title to Personal Property.”

1.4 The Augusta Option. As provided in Section 3.1(d) hereof, Purchaser has agreed to satisfy certain priority liens in connection with its purchase of the Augusta Property in an aggregate amount of up to \$20,000. Notwithstanding any provision set forth herein to the contrary, if liens on the Augusta Property superior in priority to Bank’s lien exceed \$20,000 in the aggregate at any time prior to the Closing, Purchaser shall have right, exercisable in its sole and absolute discretion (herein, the “Augusta Option”), to exclude the Augusta Property from the transactions contemplated hereby. If Purchaser exercises the Augusta Option, (i) it shall have no obligation or liability whatsoever to purchase the Augusta Property, and (ii) in lieu of purchasing such property, it shall pay McCoy 6 Seller an additional \$100,000 at Closing in consideration for the sale of the McCoy 6 Property to Purchaser. If Purchaser wishes to exercise the Augusta Option, it shall give Augusta Seller written notice of its election to exercise such option at any time prior to the Closing.

## ARTICLE II

### RETAINED AND ASSUMED LIABILITIES

2.1 Liabilities and Obligations Retained by Sellers. Except as expressly set forth in Section 2.2 hereof, each Seller shall be fully responsible for the payment of all debts and

shall retain full responsibility for the payment, discharge and satisfaction of all causes of actions, suits, demands, claims, debts, obligations and other liabilities created, arising out of or relating to the Assets sold by such Seller hereunder and the operation of such Seller's business and the business of the applicable Estate for which such Seller acts as Trustee on or prior to the Closing Date (as defined in Section 4.1 hereof), whether now known or unknown, fixed, contingent or otherwise, including, without limitation:

(a) all obligations and liabilities to the extent attributable to defaults, conditions, events, actions or omissions or accidents, claims, injuries, deaths or other damages occurring on or prior to the Closing Date;

(b) all claims of any creditors of such Seller or of the Estate for which such Seller acts as Trustee; and

(c) all obligations and liabilities to any employees, former employees, agents or consultants of such Seller or such Estate, including, without limitation, any and all severance, vacation, pension, health, maternity leave, holiday plan or policy, sick leave plan or policy, employee stock purchase or stock option plan, profit sharing plan, bonus plan, disability or group insurance plan, deferred compensation, medical, life, dental and workers' compensation obligations and liabilities, and any other employee benefit or related obligations.

## 2.2 Liabilities and Obligations Assumed by Purchaser.

At Closing, Purchaser shall assume all obligations and liabilities arising out of or relating to the Assets after the Closing Date, but only to the extent such obligations and liabilities have not otherwise been expressly retained by Sellers pursuant to Section 2.1 above.

### ARTICLE III

#### **CONSIDERATION FOR ASSETS AND DISMISSAL OF TRUSTEE PROCEEDINGS; RELATED MATTERS**

3.1 Consideration. As total consideration for the Assets, Purchaser shall pay the following sums to the applicable Seller identified below, (collectively, the "Purchase Price") at Closing in cash by means of wire transfer of immediately available funds into one or more bank accounts as specified by the respective Sellers:

(a) To Augusta Seller, on behalf of the Augusta Estate, as consideration for the Augusta Property and related Assets, the sum of \$100,000, subject to Purchaser's exercise of the Augusta Option.

(b) To McCoy 6 Seller, on behalf of the McCoy 6 Estate, as consideration for the McCoy 6 Property and related Assets, the sum of \$4,425,000, provided, that in the event Purchaser exercises the Augusta Option, said sum shall be increased to \$4,525,000.

(c) To SFR Seller, on behalf of the SFR Estate, as consideration for the SFR Property and the settlement described in Section 3.2(b), the sum of \$200,000.

(d) In addition to that portion of the Purchase Price payable to Augusta Seller for the Augusta Property, at Closing, Purchaser shall also pay Augusta Seller (i) the sum of 3% of the total amount paid to Augusta Seller under 3.1(a) above and subparts (ii) and (iii) of this part (d), as Augusta Seller's trustee commission for the sale of such property, (ii) a separate sum equal to the total amount of liens of all creditors whose liens on the Augusta Property are superior to the Bank's lien on the Augusta Property, in an aggregate amount of up to \$20,000, which Augusta Seller shall disburse to such creditors at Closing, and (iii) all unpaid real estate

taxes with respect to the Augusta Property for the period prior to Closing; provided, if Purchaser exercises the Augusta Option, Purchaser shall not be obligated to make any of the payments contemplated by this Section 3.1(d).

(e) In addition to that portion of the Purchase Price payable to McCoy 6 Seller for the McCoy 6 Property, at Closing, Purchaser shall also pay McCoy 6 Seller (i) an amount equal to 3% of the total sum payable to McCoy 6 Seller under Section 3.1(b) and 3.2(a) hereof and subpart (ii) of this part (e), as McCoy 6 Seller's trustee commission for the sale of the McCoy 6 Property, plus \$12,500.00 for McCoy Seller's legal fees and expenses incurred in connection with the transactions contemplated by this agreement, and (ii) all unpaid real property taxes with respect to the McCoy 6 Property for the period prior to the Closing.

(f) In addition to that portion of the Purchase Price payable to SFR Seller for the SFR Property, at Closing, Purchaser shall also pay SFR Seller an amount equal to the SFR Seller's statutory trustee's commission on the SFR Property sale under 11 U.S.C. § 326(a).

### 3.2 Settlement and Dismissal of the Trustee Proceedings.

(a) Settlement and Dismissal of Claims in City Lawsuit. At Closing, subject to the terms and conditions of this Agreement and in consideration of the payment at such time by Purchaser to McCoy 6 Seller of \$75,000 in cash (the "Settlement Proceeds"), McCoy 6 Seller agrees to settle and otherwise dismiss immediately following Closing, with the permission of the defendants, each of such Seller's claims in the City Lawsuit, including all claims against the City, its agencies, and all of their respective current and former employees and officers. The settlement contemplated hereby will not resolve the entire City Lawsuit and will



require the permission of the defendants in the City Lawsuit, which the parties hereto expect to be forthcoming.

(b) Settlement and Dismissal of SFR Adversary Proceeding. At Closing, subject to the terms and conditions of this Agreement and in consideration of Purchaser's purchase of the SFR Property, SFR Seller and Bank will settle and immediately following Closing dismiss all claims with respect to the SFR Adversary Proceeding. The settlement contemplated hereby will require the permission of the City, which the parties expect to be forthcoming. Without limiting the generality of the two immediately preceding sentences, in connection with the settlement and dismissal of the SFR Adversary Proceeding, SFR Seller and Bank agree that (i) SFR Seller shall withdraw his defenses and dismiss all of his counterclaims with prejudice; (ii) Bank shall dismiss all of its claims with prejudice; and (iii) they shall allow the City and the Building Commission to be dismissed from the SFR Adversary Proceeding without prejudice to any of its claims that the SFR Lease may be terminated by the City and the Building Commission or has been validly terminated.

(c) Settlement of Claims of § 548 Lawsuits. At Closing, subject to the terms and conditions of this Agreement and in consideration of the transactions described herein, McCoy 6 Seller and Bank agree that immediately following Closing, Bank will agree to the entry of judgments in the § 548 Lawsuits against Bank and in favor of McCoy 6 Seller on all claims articulated against Bank in the § 548 Lawsuits, reserving without effect the Trustee's claims against all other defendants (the "Other Defendants") in the § 548 Lawsuits. Promptly following entry of such judgments, the McCoy 6 Seller will mark such judgments "SATISFIED" in consideration of the contemporaneous assignment and transfer by Bank to McCoy 6 Seller,

without warranty, representation or recourse by McCoy 6 Seller to Bank, of all of the claims of Bank against any of the other parties to the § 548 Lawsuits arising from or related to the matters articulated in the complaints pending in the § 548 Lawsuits. Sellers and Bank agree that contemporaneous with Closing, Sellers and Bank shall execute and deliver a *Mutual Release of Claims* by which all claims by the Sellers (including the Trustees and the Estates in each of the Bankruptcy Cases) against the Bank, and all claims of the Bank against the Sellers (including the Trustees and the Estates in each of the Bankruptcy Cases) (*but expressly excluding all claims of the Bank articulated in its Proofs of Claim filed in each of the Bankruptcy Cases*) shall be released.

3.3 Payment to Bank at Closing. At Closing, Sellers shall pay Bank in cash by means of wire transfer in immediately available funds an aggregate amount equal to: (i) \$100,000 from the sale of the Augusta Property (unless Purchaser exercises the Augusta Option); (ii) \$4,370,000 from the sales proceeds received by McCoy 6 Seller from the sale of the McCoy 6 Property (or \$4,470,000 if Purchaser exercises the Augusta Option); (iii) the Settlement Proceeds; and (iv) the sum of \$200,000 received by SFR Seller from the sale of the SFR Property, plus an amount (which shall not be less than \$42,500) equal to (x) the funds then deposited in the SFR Estate's operating account, less (y) the total of: (i) SFR Seller's legal fees incurred in connection with the administration of the SFR Bankruptcy Case other than those legal fees incurred in connection with the transactions contemplated by this Agreement; (ii) SFR Seller's legal fees not to exceed \$12,500.00 incurred in connection with the transactions contemplated by this Agreement; (iii) the statutory commissions due to SFR Seller on actual or estimated distributions of property of the SFR Estate other than proceeds of the sale of the SFR

Lease; and (iv) the sum of those amounts then owed by SFR Seller for ordinary and required operating expenses incurred in the SFR Bankruptcy Case [exclusive of such expenses described in this ¶3.3(y)(i, ii and iii, *supra*)]. In no event, however, shall the Bank receive at Closing an aggregate sum from the Sellers less than \$4,787,500.00. In the event the aggregate sum available and paid to the Bank at closing shall be less than \$4,787,500.00: (a) none of the transactions contemplated under this Agreement shall be consummated; (b) all of the Bank's Liens shall be retained by the Bank in full force and effect; and (c) this Agreement thereafter shall be of no further legal force or effect.

3.4 Bank Agreement. In consideration of the terms and conditions hereof, Bank hereby agrees that it (i) will not object in the Bankruptcy Cases or otherwise to any of the transactions contemplated hereby; (ii) will accept the proceeds of such transactions in the amounts contemplated in Section 3.3 hereof; (iii) shall not bid against Purchaser any of the indebtedness owed to Bank by the Estates in connection with the transactions described herein or in any auction held with respect to any of the Assets; (iv) shall settle without additional consideration, and consent to the dismissal of, the SFR Adversary Proceeding; and (v) shall settle the § 548 Lawsuits in accordance with the terms provided in Section 3.2(c) hereof.

3.5 Taxes; Expenses. At Closing, Purchaser shall pay all excise and transfer taxes, if any, required to be paid in connection with the sale and transfer of the real estate to be transferred hereunder, and shall also be responsible solely for payment of all recording costs relating thereto.

## ARTICLE IV

### CLOSING; TERMINATION OF AGREEMENT

4.1 Time and Place. The consummation of the transactions contemplated herein (the “Closing”) shall take place at the offices of Jackson Kelly PLLC, 150 Clay Street, Morgantown, West Virginia, at a time and date within 30 days after the satisfaction of all of the conditions set forth in Article 8 hereof, or at such other time and place as the parties may mutually agree upon, at which time (the “Closing Date”) and place the following transactions shall occur:

(a) Purchaser shall pay to Sellers the applicable portion of the Purchase Price and other amounts due to each Seller as contemplated by Article III hereof;

(b) Each Seller shall deliver to Purchaser (in form and substance satisfactory to Purchaser and its counsel) one or more special warranty deeds, bills of sale, assignments (including acceptances and acknowledgments thereof), endorsements, titles, and such other instruments of conveyance as may be reasonably requested by Purchaser to transfer and convey the Assets owned by such Seller (other than any interest owned or otherwise held by McCoy 6 Estate in the SFR Property, which McCoy 6 Seller shall convey to Purchaser by quitclaim deed) to Purchaser and to otherwise effect the consummation of the transactions contemplated by this Agreement and which are normal and customary in transactions of like kind;

(c) Each Seller shall deliver to the title insurance company designated by Purchaser affidavits, dated as of the Closing Date, in the form then required by such title

insurance company to insure title at its regular rates in accordance with its title commitments, and in form reasonably acceptable to each Seller;

(d) Each of Sellers (as the case may be) shall deliver to Purchaser copies of the Court Orders dismissing the City Lawsuit and SFR Adversary Proceeding as soon as reasonably practicable after the Closing.

(e) Each Seller shall deliver to Purchaser the Books and Records held by it relating to the respective Assets sold by such Seller hereunder, including without limitation, the original copies of the Leases, if any;

(f) All applicable utility and similar deposits, shall be transferred or credited to Purchaser at Closing; and

(g) Each Seller shall deliver to Purchaser or transfer into Purchaser's name, or cause to be delivered to Purchaser or transferred into Purchaser's name, all bonds, cash or cash equivalents in connection with any permits, licenses or other governmental authorizations held by such Seller with respect to the Assets sold by such Seller hereunder, and shall take all other actions requested by Purchaser to deliver to Purchaser physical possession of all such Assets.

4.2 Termination of Agreement. Anything herein to the contrary notwithstanding, this Agreement may be terminated immediately and the transactions herein contemplated may be abandoned at any time:

(i) by mutual consent of Sellers and Purchaser; or

(ii) by Purchaser if Sellers shall default in the performance of any part of this Agreement, or if any of the conditions set forth in Article VIII has not been satisfied prior to June 30, 2013; or

(iii) by Purchaser if the Bankruptcy Court enters an order approving the sale of any of the Assets to a party other than Purchaser; or

(iv) by Purchaser or Sellers if the Bankruptcy Court has not entered a Bankruptcy Court Order approving the sale of the Assets to Purchaser contemplated hereby on or by June 30, 2013, and no agreement has otherwise been reached by the parties to extend the date for the Closing; or

(v) by Bank, if Closing shall not have occurred with payment to Bank of all sums contemplated in Paragraph 3.3., *supra*, by December 14, 2012.

**ARTICLE V**

**REPRESENTATIONS AND WARRANTIES OF SELLERS**

NOTE: EACH OF SELLERS IS A BANKRUPTCY TRUSTEE AND HAS NO KNOWLEDGE OF THE CONSTRUCTION OF ANY IMPROVEMENTS LOCATED ON THE REAL PROPERTY, BUT IS AWARE GENERALLY OF NUMEROUS STRUCTURAL DEFICIENCIES OF SUCH IMPROVEMENTS OR THEIR RESPECTIVE COMPONENTS OR SYSTEMS. SELLER HAS GIVEN PURCHASER THE OPPORTUNITY TO INSPECT THE STRUCTURAL COMPONENTS AND RELATED COMPONENTS AND SYSTEMS OF SUCH IMPROVEMENTS, AND PURCHASER HAS CONDUCTED INSPECTIONS OF THE SUCH IMPROVEMENTS TO ITS SATISFACTION PRIOR TO THE EXECUTION OF THIS



AGREEMENT, AND PURCHASER AGREES TO ACCEPT THE IMPROVEMENTS AS IS, WHERE IS, AND WITHOUT WARRANTY OF ANY KIND FROM THE SELLERS.

Based on the above statement, each of Sellers hereby represents and warrants to Purchaser, but only to the extent such representation and warranty applies to such Seller and the Estate for which such Seller acts as Trustee or to the Assets to be sold by such Seller hereunder, as follows:

5.1 Organization and Qualification. Such Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of West Virginia and has the requisite limited liability company power to own its property and to carry on its business as it is now being conducted, and Robert L. Johns has been duly appointed as trustee of each of the bankruptcy estates of Augusta, McCoy 6 and SFR, respectively, in the Bankruptcy Cases.

5.2 Seller's Authority Relative to this Agreement. Such Seller has full power and authority to enter into, deliver and perform this Agreement and to consummate the transactions contemplated hereby. On or before the Closing Date, the execution and delivery of this Agreement by such Seller and the consummation by such Seller of the transactions contemplated hereby will have been duly authorized by all necessary legal proceedings on the part of such Seller, including proceedings before the Bankruptcy Court involving the Bankruptcy Case applicable to such Seller, and no other corporate or legal proceedings are necessary to authorize this Agreement and the transactions contemplated hereby or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by

such Seller and constitutes a valid and binding obligation of such Seller, enforceable in accordance with its terms, subject to approval by the Bankruptcy Court.

5.3 Condemnation; Leases. Each Seller has no knowledge concerning any contemplated or proposed public use, taking or purchase by condemnation of, or any exercise of the power of eminent domain with respect to, any part or all of the Real Property owned or leased by it. To the best of SFR Seller's knowledge, other than the SFR Estate, no other party holds, or purports to hold, a leasehold interest in the SFR Lease. There are no current leases with respect to any of the Real Property (other than the SFR Lease).

5.4 Compliance with Law. To each of Seller's actual knowledge, except as set forth on Schedule 5.4 attached hereto, and except for City of Morgantown Code enforcement actions related to McCoy 6 Properties, none of Sellers, Augusta, McCoy 6, SFR or any of the Estates has received any written orders, notices of investigation, assessments or any other notices from any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, that any of Sellers, Augusta, McCoy 6, SFR, the Estates or the Assets, or any part thereof, is in violation of any law, regulation, rule, order, decree or judgment applicable to such Seller, Augusta, McCoy 6, SFR, the Estates or any of the Assets.

5.5 Environmental. To each of the Seller's actual knowledge, no hazardous materials have been used, discharged or stored on or about the Real Property, and no such hazardous materials are now or will be at Closing located on or below the surface of the Real Property. As used herein, "hazardous materials" shall mean asbestos, oil as defined in the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, and any "hazardous substance", "hazardous materials" or "hazardous wastes" as defined or used in the Federal Water Pollution

Prevention and Control Act, supra, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 18015101-5128, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-7000, and in the regulations adopted and publications promulgated pursuant thereto, or in any other federal, state or local environmental law, ordinance, rule or regulation.

5.6 Title to Personal Property. Based on the operation of Section 363 of the Bankruptcy Code, each Seller will convey Good Title to Personal Property with respect to any Assets owned by such Seller other than the Real Property, free and clear of all liens, security interests, claims, encumbrances and restrictions of every kind or nature.

5.7 Legal Proceedings, etc. Except as set forth on Schedule 5.7 attached hereto, and City of Morgantown Code Enforcement actions related to McCoy 6 Properties, there is no legal, administrative, arbitration or other proceeding or known governmental investigation pending, or to the best of each Seller's knowledge, threatened, against or affecting such Seller, the Estates, Augusta, McCoy 6 or SFR which, either alone or in the aggregate, is reasonably likely to have an adverse effect on any of the Assets, or on any action taken or to be taken by such Seller under this Agreement.

5.8 Conflicting Instruments. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not, with or without the giving of notice, or the passage of time, (a) conflict with or result in the breach of any provision of the articles of organization or operating agreement of Augusta, McCoy 6 or SFR, or (b) conflict with, violate, constitute a default under or result in the breach of any law,

order, rule, regulation, writ, injunction or decree of any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, having jurisdiction over Sellers, the Estates or any of the Assets.

5.9 Consents and Approvals Authorities and Other Persons. Except for approval by the Bankruptcy Court and as set forth on Schedule 5.9 attached hereto, no characteristic of any of Sellers, Augusta, McCoy 6, SFR or the Estates or of the nature of their business or operations requires any consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority or any other person in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

5.10 Intangible Property. None of Sellers, or to Sellers' knowledge, the Estates, has any registered patents, trademarks, service marks or trade names and no franchises; no applications for any of the foregoing are pending; and there are no permits, grants, licenses or other rights running to or from any of Sellers or Estates relating to any of the foregoing which are material to the business of such Seller or Estate. None of Sellers, or to Sellers' knowledge, the Estates, has infringed any adversely held patent, invention, trademark, service mark, trade name or brand name of any other person or received notice of any claim of any such infringement and none of Sellers knows of any basis for any such charge or claim.

5.11 Brokers. No broker or finder has acted directly or indirectly for any of Sellers in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect

thereof based in any way on agreements, arrangements or understandings made by or on behalf of such Seller.

## ARTICLE VI

### **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Sellers as follows:

6.1 Corporate Organization and Authority. Purchaser is a public agency duly organized and validly existing under the laws of the State of West Virginia, authorized to determine, control, supervise and manage the financial, business and education policies and affairs of West Virginia University, and has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

6.2 No Default or Breach of Obligations. Neither the execution or delivery by Purchaser of this Agreement and the documents to be executed and delivered by it pursuant hereto, nor the consummation of the transactions contemplated herein or therein, will conflict with, violate or result in the breach of or constitute a default under any law, regulation, order, writ, injunction, decree, determination or award of any court, governmental department, board, agency or instrumentality, domestic or foreign, having jurisdiction over Purchaser, or any arbitrator, applicable to Purchaser.

6.3 Execution and Delivery. The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated have been duly authorized by Purchaser's governing board, and no other corporate proceedings on the part of Purchaser are necessary to authorize this Agreement and the transactions contemplated hereby.

This Agreement has been duly executed and delivered by Purchaser and constitutes a valid and binding obligation of Purchaser, enforceable in accordance with its terms.

6.4 Brokers. No broker or finder has acted directly or indirectly for Purchaser in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements or understandings made on behalf of Purchaser.

## ARTICLE VII

### OBLIGATIONS PRIOR TO CLOSING

7.1 Conduct of Business. Each Seller covenants and agrees that, except as otherwise consented to by Purchaser prior to the Closing:

(a) Such Seller's business and the businesses of the Estate for which such Seller acts as Trustee shall be conducted only in, and such Seller and Estate shall not take any action except in, the ordinary course of business and consistent with past practice.

(b) Neither such Seller nor such Estate will engage in any one or more of the following activities:

(i) issue, sell, pledge, or dispose of, or agree to issue, sell, pledge or dispose of, any of its membership interests, or grant or issue, or agree to grant or issue, any options, warrants or other rights calling for the issue thereof;

(ii) sell, pledge, dispose of or encumber any of the Assets;

(iii) make or permit to be made any amendment or termination of any material contract or agreement to which it is a party or surrender or forfeit any permit or license or other material governmental authorization necessary to own or operate any of the Assets;



- (iv) make any material investment of a capital nature;
- (v) incur any indebtedness or borrow money, make any loans or advances to any individual, firm or corporation, or assume, guarantee, endorse or otherwise become responsible for the obligation of any other individual, firm or corporation;
- (vi) enter into any long-term contracts or commitments; or
- (vii) use any of the Assets except for proper corporate purposes and in accordance with all applicable federal, state and local laws and regulations.

7.2 Access to Information. Each of Sellers shall afford the officers, employees and agents of Purchaser complete access at all reasonable times, from the date hereof to the Closing, to its officers, employees, agents, properties, operating manuals, books and records, and shall furnish Purchaser all financial information, operating manuals and other data and information relating to the Real Property and other Assets as Purchaser, through its officers, employees or agents, may reasonably request, including, but not limited to, any and all building and engineering plans and records, environmental studies, appraisals, lists of claimants against the Estates with current amounts claimed, insurance policies, title opinions, surveys, maps, leases, and the Permits and Licenses.

7.3 Consents; Additional Agreements. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, including (i) using reasonable efforts to remove any legal impediment to the consummation or effectiveness of such transactions, and (ii) using reasonable efforts to obtain all

necessary waivers, consents and approvals of all third parties and governmental bodies, and to effect all necessary filings with all applicable state and federal governmental agencies or authorities.

7.4 Insurance. Until the Closing Date, each of Sellers will maintain in full force and effect all of its presently existing insurance coverage, or insurance comparable to such existing coverage.

## ARTICLE VIII

### CONDITIONS TO OBLIGATIONS OF PURCHASER

Each and every obligation of Purchaser under this Agreement to be performed on or before the Closing shall be subject, unless waived by Purchaser, to the satisfaction on or before the Closing Date of each of the following conditions:

8.1 Bankruptcy Court Approval. The entry of a final order of the Bankruptcy Court approving all of the transactions contemplated herein (which shall be substantially in the form attached hereto as Exhibit 8.1) on or by June 30, 2013, including, without limitation, an order pursuant to 11 U.S.C. §§ 363 and 365 (i) approving the sale of the Assets and the assignment of any leases, free and clear of any and all liens, security interests, claims, options, easements, encumbrances and other restrictions (including, without limitation, any claims, whether contingent or otherwise, for real property taxes, with any real property taxes to be paid at Closing), except for the liens for all real estate property taxes for the year 2013; (ii) approving the other agreements among the parties hereto as provided in this Agreement; and (iii) which shall be in all respects in compliance with applicable bankruptcy laws and rules and shall otherwise be in form and content satisfactory to Purchaser and its counsel.

8.2 Title to Assets. In the opinion of counsel for Purchaser, at the Closing Purchaser will be acquiring Good and Marketable Title to Real Property, and Good Title to Personal Property.

8.3 Title Insurance and Survey. Purchaser shall have received an Owner's Title Insurance Policy insuring title to the Real Property in the sum of not less than \$4,800,000, dated or updated to the Closing Date, issued by a reputable title insurance company at regular rates, satisfactory to Purchaser in form and substance, containing no exceptions for matters of survey, mechanics liens, parties in possession (other than the tenants under the Leases) or for any other matter which Purchaser reasonably determines to be unacceptable, and Purchaser shall have also received an "as-built" survey satisfactory to it and to such title insurance company for the removal of the exception for matters of survey. Each of Sellers agree that Purchaser may, in its sole discretion, elect to use the description of the Real Property set forth in such survey in the deed or deeds to be executed and delivered at the Closing, in lieu of the description of the Real Property attached hereto as Schedules 1.1(a), 1.1(b) and 1.1(c). All premiums for such title insurance shall be borne by Purchaser, and all attorney fees and similar costs for an examination and report to such insurance company shall be borne by Purchaser.

8.4 Condition and Sufficiency of Assets. Since the execution of this Agreement, the Assets shall not have been adversely affected in any material way as the result of any act of God, fire, flood, war, labor disturbance or similar calamity, or by the actions of any lessee thereof or any other persons, and there shall not otherwise have been any material adverse change in the condition of the Assets since the date hereof.

8.5 Permits and Licenses. Purchaser shall have received all permits and licenses as Purchaser and its counsel shall deem necessary in order to purchase and operate the Assets and to otherwise occupy the Real Property, provided that the failure to have resolved the notices of violations issued by the City of Morgantown Code Enforcement Agency with respect to the McCoy 6 Properties shall not relieve Purchaser of its obligation to close the transactions contemplated herein.

8.6 Environmental. Purchaser shall have completed all environmental investigations of the Real Property and shall have received an environmental report with respect to such Real Property satisfactory to Purchaser in its sole discretion.

8.7 Consummation of Related Transactions. The transactions contemplated by that certain Agreement by and among the City, the Building Commission and Purchaser (which transactions were initially presented to the Morgantown City Council for approval on September 18, 2012) shall have been consummated in all respects.

8.8 Representations and Warranties True. The representations and warranties contained in Article V hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

8.9 Performance of Covenants. Each Seller shall have performed and complied in all material respects with each and every covenant, agreement and condition required to be performed or complied with by it prior to or on the Closing Date.

8.10 No Governmental or Other Proceeding or Litigation. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated hereby, and no suit, action, investigation, inquiry or proceeding by any

governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby or seeks to impose any liability on Purchaser as a result of the transactions contemplated hereby.

8.11 Approvals and Consents. All consents and approvals of any private person, and all consents and approvals or the absence of disapprovals within applicable time periods, from public authorities, Federal, state, foreign or local (or exemptions from the requirements therefor), the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement, shall have been obtained, including, without limitation, any required approval by public entities or public bodies, and the governing boards thereof, in connection with a sale to a public entity or public body.

8.12 No Injunctions. On the Closing Date, there shall be no effective injunction, writ or temporary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing the transactions provided for herein not be consummated as herein provided.

## ARTICLE IX

### **CONDITIONS TO SELLERS' OBLIGATIONS**

Each and every obligation of Sellers under this Agreement to be performed on or before the Closing shall be subject, unless waived by Seller, to the satisfaction on or before the Closing Date of the following conditions:

9.1 Bankruptcy Court Approval. The entry of a final order of the Bankruptcy Court approving all of the transactions contemplated herein (which shall be substantially in the

form attached hereto as Exhibit 8.1), including, without limitation, an order pursuant to 11 U.S.C. §§ 363 and 365 (i) approving the sale of the Assets and the assignment of any leases, free and clear of any and all liens, security interests, claims, easements, encumbrances and other restrictions (including, without limitation, any claims for real property taxes, with any real property taxes to be paid at Closing), except for the liens for all real estate property taxes for the year 2013; (ii) approving the other agreements among the parties hereto as provided in this Agreement; and (iii) which shall be in all respects in compliance with applicable bankruptcy laws and rules and shall otherwise be in form and content satisfactory to Seller and its counsel.

9.2 Representations and Warranties True. The representations and warranties contained in Article VI hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

9.3 Performance of Covenants. Purchaser shall have performed and complied in all material respects with each and every covenant, agreement and condition required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

9.4 No Governmental or Other Proceeding or Litigation. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated hereby, and no suit, action, investigation, inquiry or other proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby or seeks to impose any liability on Seller as a result of the transactions contemplated hereby.



9.5 Approvals and Consents. All consents and approvals of any private person, and all consents and approvals or the absence of disapprovals within applicable time periods, from public authorities, Federal, state, foreign or local (or exemptions from the requirements therefor), the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement, shall have been obtained.

9.6 No Injunctions. On the Closing Date, there shall be no effective injunction, writ or temporary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing the transactions provided for herein not be consummated as herein provided.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

10.1 Risk of Loss. Risk of loss of, or damage or destruction to, any of the Assets to be transferred to Purchaser hereunder from fire or other casualty or cause, shall be borne by Seller at all times prior to the Closing Date.

10.2 Entire Agreement. This Agreement, including the Schedules which form a part hereof, contains the entire understanding of the parties hereto in respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

10.3 Survival of Representations and Warranties. All representations, warranties, agreements, covenants and obligations made or undertaken by Purchaser or Seller in

this Agreement (including the Schedules attached hereto), or in any certificate, instrument or document delivered by or on behalf of any of the parties pursuant to this Agreement, shall survive the Closing hereunder (except that no such representations, warranties, agreements, covenants and obligations made or undertaken by the Trustee for each Seller entity shall survive beyond the closing of the respective bankruptcy cases) and expressly shall not be merged into any of the closing documents contemplated to be executed by Purchaser, Sellers, Bank or any other parties thereto.

10.4 Amendment and Modification. This Agreement may be amended, modified and supplemented only by an instrument in writing signed by all of the parties hereto.

10.5 Assignment. This Agreement and all the provisions hereof shall be binding upon and inure to the benefits of the parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party.

10.6 Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by U.S. registered or certified mail, return receipt requested, postage prepaid:

If to Purchaser to:

Vice President for Administration and Finance  
West Virginia University  
P. O. Box 6205  
Morgantown, West Virginia 26506

With a copy to:

Vice President for Legal Affairs and General Counsel  
West Virginia University  
P. O. Box 6201  
Morgantown, West Virginia 26506

With a copy to:

William F. Dobbs, Jr.  
Jackson Kelly PLLC  
P. O. Box 553  
Charleston, West Virginia 25322

If to Sellers:

Robert L. Johns, Trustee of the Bankruptcy  
Estate of Augusta Apartments, LLC,  
the Bankruptcy Estate of McCoy 6, LLC  
and the Bankruptcy Estate of SFR  
216 Brooks Street, Suite 200  
Charleston, West Virginia 25301

If to Bank:

First United Bank & Trust  
P.O. Box 9  
19 South Second Street  
Oakland, MD 21550-0009

With a copy to:

Roger Schlossberg, Esquire  
Schlossberg & Associates  
P.O. Box 4227  
134 West Washington Street  
Hagerstown, MD 21741-4227

or to such other address as a party shall hereafter specify by notice in writing to the other.

10.7 Non-waiver. No waiver or omission by either party to require performance by the other party of any of the terms and conditions of this Agreement, and no forbearance or indulgence granted or shown by either party, shall be effective unless contained in

a written instrument signed by the waiving party, nor shall it release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all provisions or obligations of this Agreement on the latter's part to be performed unless it is so stated in said writing.

10.8 Expenses. Regardless of whether the Closing occurs, each party shall bear its own expenses in connection with this Agreement and the transactions herein contemplated, except to the extent resulting from a misrepresentation by either party or the breach by either party in performing their respective obligations herein, and except as otherwise expressly provided herein.

10.9 No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person other than the undersigned parties any rights or remedies under or by reason of this Agreement.

10.10 Further Assurances. Each of Sellers hereby agrees, upon the request of Purchaser and without additional consideration, to take any and all steps reasonably necessary to place Purchaser in possession and operating control of the Assets, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances or assurances as may be reasonably required in order fully to transfer, assign, convey, grant, assure and confirm to Purchaser all of the Assets, or to vest in Purchaser such title to the Assets, as provided herein.

10.11 Severability of Provisions. If any provision of this Agreement, or the application thereof, to any person or circumstance shall, to any extent, be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such

provision to persons or circumstances other than those to which it is held to be invalid or enforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.

10.12 Headings. The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

10.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

10.14 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of West Virginia (without reference to any conflicts of laws principles thereof).

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

SELLERS:

AUGUSTA APARTMENTS, LLC

By: \_\_\_\_\_  
Robert L. Johns, Trustee of the Bankruptcy  
Estate of Augusta Apartments, LLC

MCCOY 6, LLC

By: \_\_\_\_\_  
Robert L. Johns, Trustee of the Bankruptcy  
Estate of McCoy 6, LLC

THE SQUARE AT FALLING RUN, LLC

By: \_\_\_\_\_  
Robert L. Johns, Trustee of the Bankruptcy  
Estate of The Square at Falling Run, LLC

PURCHASER:

WEST VIRGINIA UNIVERSITY BOARD OF  
GOVERNORS ON BEHALF OF WEST  
VIRGINIA UNIVERSITY, a State Institution of  
Higher Education

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

BANK:

FIRST UNITED BANK AND TRUST

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

**SCHEDULE 1.1(a)**

**Description of Augusta Real Property**

<b>Map:</b>	<b>Parcel:</b>	<b>Description:</b>	<b>Recording Information:</b>
20	426	Part Lot 5, Hoffman Addition, Fourth Ward 357 Falling Run Road	DB 1336/480



**SCHEDULE 1.1(b)**

**Description of McCoy 6 Real Property**

<b>Map:</b>	<b>Parcel:</b>	<b>Description:</b>	<b>Recording Information:</b>
8B	27	Lots 4,5,6,7 BW Harris Addition – Braddock St, Morgan District	DB 1317/184
14	481	Lot 15 x 118, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Eight therein)
20	231	Lot 14 (23) – 14 Jones/305 Stewart, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixty therein)
20	391.1	Pt Lot 11 or .0477 Ac, Hoffman Addition – Yoke Street, Fourth Ward	DB 1247/115
20	392	Pt Lot 11 or .0516 Ac, Hoffman Addition – Stewart Street, Fourth Ward	DB 1244/1
20	393	Pt Lot 11, Hoffman Addition, 33& 33 ½ Yoke St, Fourth Ward	DB 1206/466
20	399	Lot 29, Beauty Terrace Addition - 254 Stewart St, Fourth Ward	DB 1317/187
20	415	Pt Lots 9 & 10 & Strip, Block A, Univ. Pl Add #2, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty therein)
20	462	Lot 250 x 262 Irr – 25 Glenn St, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
20	462.1	Lot 125 x 262 Irr, Braddock Street and Falling Run Road, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
20	507	Bl 6, Lots 40 to 45 Inc, University Place Addition #2 – 26 Outlook, Fifth Ward	DB 1311/113
20	512	Bl 6, Lot 8, University Place Addition #2, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Two therein)
20	513	Bl 6, Lot 7, University Place Addition #2, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Two therein)
20	514	Bl 6, Lot 6, University Place Addition #2 - 348	DB 1233/492 &

<b>Map:</b>	<b>Parcel:</b>	<b>Description:</b>	<b>Recording Information:</b>
		Falling Run Road, Fifth Ward	DB 1181/92 (Tract No. Thirty One therein)
20	P/O 516	P/O Bl 6, Lots 3,4,5, University Place Addition #2 - 348 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty therein)
20	P/O 517	P/O Bl 6, Lots 1,2, University Place Addition #2 - 336 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Twenty Nine therein)
20	P/O 518	P/O Bl B, Lot Pt 8, Fife Addition - 332 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Five therein)
20	P/O 519	P/O Bl B, Lot Pt 7,8, Fife Addition - 328 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Four therein)
20	522	Bl B, Lot 4, Fife Addition - 312 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Forty Six therein)
20	523	Bl B, Lot 3, Fife Addition - 308 Falling Run Road, Fifth Ward	DB 1224/254
20	532	Bl B, Lot 12, Fife Addition - 1872 University Avenue, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifteen therein)
20	533	Lot 13, Hayes Addition - 1866 University Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Forty One therein)
20	541	Bl A, Lot 4, Hayes Addition - 725 College Ave, Fifth Ward	DB 1177/587
20	542	Bl A, Lot 5, Hayes Addition - 727 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Twenty Five therein)
20	545	Bl A, Lots 13 - 17, Fife Addition - College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Six therein)
20	545.2	Bl A, Lots 11 & Pt of Lot 12, Fife Addition - 747 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Three therein)
20	546	Bl A, Lot 10, Fife Addition - 749 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. One therein)
20	547	Bl A, Lot 9, Fife Addition - 751 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Two therein)

<b>Map:</b>	<b>Parcel:</b>	<b>Description:</b>	<b>Recording Information:</b>
20	548	Bl 6, Lts 51 thru 56, Pt Lot 57, University Place Addition #2, Fifth Ward	DB 1219/207
20	549	Bl 6, Part of Lt 57, University Place Addition #2, Fifth Ward	DB 1219/207
20	558	Bl 1, Lots 4-11 Inclusive, Wilson Addition – 50 Outlook Street, Fifth Ward	DB 1233/290
20	559	Lot 80 x 200 – 551 Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
20	560	Lot 1-B, Wilson Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
20	578	Bl B, Lot 3, Pt Lts 2&4, Atwood Addition – 820 College Ave, Fifth Ward	DB 1219/204
20	663	P/O Annulled Rainy St, Fifth Ward	DB 1312/350
21	12	6.0 Ac - 684 Braddock Street, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
21	16	3.35 Ac, Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
21	23	2.95 Ac, College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Seventeen therein)
21	24	Bl 14, Lots 10, 11, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	38	Bl 11, Lots 19 to 22, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	39	Bl 10, Lots 15 to 19, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	56	Bl 7, Lots 17-19, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	57	Bl 6, Lots 10 to 14, All Undeveloped Prop, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)

## SCHEDULE 1.1(c)

### **Description of SFR Property**

The property underlying and subject to the SFR Lease is more particularly described as follows:

All of the following described lots or parcels of real estate, together with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying, and being in the Fourth and Fifth Wards of The City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows, to-wit:

**University Place No 1 (Fourth Ward):** Plat recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 270, at Page No. 549.

**Parcel One - Block A (Fourth Ward, Tax Map 20, Parcels 394, 395,396, 397, 407, 408, 409, 416, 417, and 419):** All of Lot Nos. 2, 3, 4, 5, 6, 7, 8, 11, 12, and 13, Block A, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Flat is recorded in said Clerk's Office in Deed Book No. 270, at Page No. 549.

**Parcel Two (Fourth Ward, Tax Map 20, Parcels 414):** The following portions of Lot No. 10, Block A, as laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid, and said parcels are described as follows:

**Tract One:** All that certain lot or parcel of land fronting 20 feet on the East side of College Avenue and extending back with a uniform width along the Western line of Lot No. 11, owned by Manasa M. Creel, to the lands of Oscar Custafson, and being the Southwestern half of the Southern 20 feet of Lot No. 10, in Block A, in University Place.

**Tract Two:** All that certain lot or parcel of land fronting 20 feet on the Southwest side of Yoke Street, and extending back along Lot No. 11 with a uniform width for a distance of 45 feet, and being designated as the Southeastern 20 x 45 feet of Lot No. 10, in Block A, in University Place.

**Tract Three:** All that certain lot or parcel of land fronting 25 feet on the Southern side of Yoke Street, and extending back with a uniform width a distance of 45 feet, and being designated as the Northern half of the Eastern end of Lot No. 10, in Block A, in University Place.

There is excepted and reserved from Tract Three above-described, a strip or parcel

of real estate 10 feet wide and 45 feet in length as was conveyed by William J. Jones, widower, to Clarence W. McCutcheon, et ux., by Deed dated the 24th day of August, 1948, and recorded in said Clerk's Office in Deed Book No. 241, at Page No. 25, and described therein as beginning at the Northeast corner of a lot owned by McCutcheon, which corner is on the South side of Yoke, and extending thence 10 feet with the Southern side of Yoke Street; thence in a line parallel with the line of said McCutcheon 45 feet; thence parallel with Yoke Street 10 feet; thence with McCutcheon Lot 45 feet to the point and place of beginning.

**Parcel Three - Block B (Fourth Ward, Tax Map 20, Parcels 403, 404, 404.1, 405, and 406):** All of Lot Nos. 1, 2, 3, 4, and 5, Block B, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid.

**Parcel Four - Block C (Fourth Ward, Tax Map 20, Parcels 411, 412 and 413):** All of Lot Nos. 1, 2, 3, 4, and 5, Block C, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid.

**Parcel Five (Fourth Ward, Tax Map 20, Part of Parcel 397):** Being the same property that *was* conveyed to I. G. Lazzelle by Jacob Guseman and Elizabeth A. Guseman, his wife, by Deed dated the 24th day of April, 1903, and recorded in said Clerk's Office in Deed Book No. 71, at Page No. 313, and therein described as follows:

Beginning at a point in the division line of the Grantor, Jacob Guseman and the Land of the Grantee, where two (2) of the lines of the parcels of land hereby conveyed intersect two (2) of the lines of the parcel of land this day conveyed to the said Jacob Guseman by the said I. G. Lazzelle and wife, which point is 25.1 feet from the Northwestern corner of the land of the said I. G. Lazzelle, and running thence in a Northeasterly direction with said division line to said corner, a distance of 25.1 feet; thence in a Westerly direction with Stewart Street to the Northwestern corner of land hereby conveyed, a distance of 18 feet; thence in a Southerly direction, a distance of 21.3 feet to the point and place of beginning. This parcel appears to be 18 feet on Stewart Street, adjoining the Northern part of Lot No. 2, 21.5 feet and running back to the beginning 21.3 feet.

There is excepted and reserved from Lot No. 2, Block A, University Place No. 1, and Parcel No. 5 of this Deed the following described tract or parcel of real estate: Being a rectangular strip of ground parallel to and adjoining Stewart Street being known as Number 270 Stewart Street, said parcel of land having a uniform width of 3.25 feet and a length of 33 feet.

**Parcel Six:** All of that part of Sycamore and Lee Streets that were annulled by Common Council of Morgantown Ordinance adopted on November 26, 1940, and recorded in said Clerk's Office in Deed Book No. 687, at Page No. 610.

**Parcel Seven (Fifth Ward, Tax Map 20, Parcel 520):** Fife Addition, Plat recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

All of Lot No. 6, and the Western 8 feet of Lot No. 7, in Block "B", as laid down and shown on the Plan of Fife Lots as recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288; which said Lot No. 6 fronts on Falling Run Avenue for a distance of forty (40) feet, and extends back with line of Lot No 5, in said Block, on the West for a distance of 67.5 feet to a 20 foot street, and with the line of Lot No. 7, in said Block, on the East for a distance of 75.2 feet to said 20 foot street, and on which said 20 foot street said Lot fronts for a distance of 40 feet; and, said part of said Lot No. 7, fronts for a distance of 8 feet on Falling Run Avenue, and extends back with line of said Lot No. 6 for a distance of 75.2 feet on the West, and with the line of property owned by the Athens Building and Loan Association, formerly owned by M. M. Creel, on the East for a distance of approximately 80 feet to said 20 foot street.

**Parcel Eight (Fifth Ward, Tax Map 20, Parcels 521 and Part 522):** All of Lot No. 5, Block B, as the same is laid down and designated on the Official Sales Map or Plat of the Fife Addition, a copy of which said Sales Map or Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

**Cyrus K. Fife Addition (Fifth Ward):** Plat recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496.

**Parcel Nine (Fifth Ward, Tax Map 20, Parcel 527):** Part of Lot No. 7 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

Beginning at an iron pin, corner of Lot Nos. 7 and 9, in Falling Run Street, and running thence with the division line of said Lots in a Southerly direction 88 feet to an iron pin on Ray Street, another corner of Lot Nos. 7 and 9; thence with said Ray Street in a Westerly direction 39 feet to an iron pin corner to an iron pin on Falling Run Street, said pin being located 1 1/2 feet East of the corner of Lot Nos. 7 and 8; thence with Falling Run Street in an Easterly direction 36 1/2 feet to the place of beginning.

**Parcel Ten (Fifth Ward, Tax Map 20, Parcel 528):** All of Lot No. 8 and a small triangular parcel of Lot No. 7 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

Beginning at a point on Falling Run Street, corner to Lot Nos. 8 and 10 of the Official Sales Map of the Cyrus K. Fife Plan Of Lots as surveyed by J. G. Samsell, Engineer, on the 19th day of May, 1898, which Plat is recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496, and running thence in an Easterly direction along Falling Run Street, 39.5 feet to a stake, which point is 18 inches East of the corner of Lot Nos. 7 and 8 in said Plan Of Lots; thence leaving said Falling Run Street and running in a Southerly direction 83.5 feet to a stake in Ray Street, corner to said Lot Nos. 7 and 8; thence with Ray Street in a Westerly direction, 39 feet to a stake; thence in a Northerly direction, following the division line between Lot Nos. 8 and 10, as they are laid down on said Plat, 78 1/2 feet to the place of beginning; and being all of Lot No. 8 and a small triangular piece of land off of the Western side of Lot No. 7, having a frontage

on Falling Run Street of 18 inches and running back therefrom with said Lot No. 8 to a point at the original corner between Lot Nos. 7 and 8 on said Plat,

**Parcel Eleven (Fifth Ward, Tax Map 20, Parcel 531):** All of Lot No. 11 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

And being part of the same property that was conveyed to The City of Morgantown, a municipal corporation, by McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by Deed dated the 20th day of December, 2004, which is of record in said Clerk's Office in Deed Book No. 1285, at Page No. 39.

**Parcel Twelve (Fifth Ward):** Parcel No. 524: Beginning at a certain point corner to Lots No. 2 and No. 3 on Ray Street, now known as Rainy Street, thence with said Ray Street, now known as Rainy Street 50 feet to corner of Lot Nos. 1 and No. 2; thence along said Lot No 1, 86.5 feet to Falling Run Street; thence along said Falling Run Street, 50 feet to the corner of Lot No. 3; thence along said Lot No. 3, 80.7 feet to the beginning, and being the same lot or parcel known as Lot No. 2, in Block B in the "Fife Addition" to the City of Morgantown, West Virginia, as surveyed and platted by Russell L. Morris, C.E.

**Parcel Thirteen (Fifth Ward):** Parcel No. 525: Beginning at a point on the Southern property line of Falling Run Road (formerly known as Falling Run Street), corner to Lot No. 9 of the Plan Of Fife Lots; thence with the Southern property line of said Falling Run Road, N. 71° 07' E. 50.00 feet to a point, corner to Lot No, 2, in Block B, now or formerly owned by Charles E. and Wilhelmina B. Penrod, his wife, thence S. 26° 02' E. 86.50 feet to point on the Northern side of a right-of-way for a 20 foot street (formerly known as Ray Street); thence with the same, S. 64° 30' W. 50.00 feet to a point; thence N. 25° 47' 30" W. 92.26 feet to the place of beginning, being Lot No. 1, in Block B, in the Fife Addition to The City of Morgantown, as laid down and designated on a Map or Plat of the Fife Lots, prepared by Morris and Bums, Engineers, in 1903, which Plat is of record in said Clerk's Office in Deed Book No, 93, at Page No. 288.

**Parcel Fourteen (Fifth Ward):** Parcel No. 526: All of Lot No. 9, as the same is laid down and designated upon the Official Sales Map or Plat of the C. K. Fife Addition, a copy of which said Plat is duly recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496,

**Parcel Fifteen (Fifth Ward):** Parcel No. 529: Beginning at the corner of a parcel of land conveyed to J. J. Guseman by Clark B. Hall under deed dated the 21st day. of January, 1905, and recorded in said Clerk's Office in Deed Book No. 83, at Page No. 28, at a stake in the line running with Falling Run Street, N. 71° 7' E. 35 feet to the corner of Lot No. 8; thence with the Western line thereof, S. 20° 33' E. 78.65 feet to Ray Street, now known as Rainy Street; thence with the same, S. 39° 57' W. 16.25 feet to the corner of said J. J. Guseman's lot, and with the same, N. 33° 53' W. 90.03 feet to the point and place of beginning, and being a part of Lot No, 10 of the Cyrus K. Fife Plan Of Lots, a copy of which Plan is recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496.

**Parcel Sixteen (Fifth Ward):** Parcel No. 530: Beginning at a point in the Southeasterly line of Beverly Street, now called University Avenue, a corner to Lot No. 11, and running thence with said avenue, N. 36° 57' E. 17 feet and 5/8 inches to the intersection of said avenue with Falling Run Street; thence N. 71° 7' E. 38 feet and 9 inches with Falling Run Street to a stake; thence from said stake at a point in Falling Run Street; S. 33° 53' E. 90.03 feet to a point in line of Ray Street, now known as Rainy Street; thence with Ray Street, now known as Rainy Street, S. 39° 57' W. 20 feet to the corner of Lot No. 11; thence with said Lot No. 11, N. 55° 3' W. 105.06 feet to the place of beginning, and being part of Lot No. 10, in Block 8 of the Fife Addition to said City, as shown upon a Plat thereof recorded in said Clerk's Office in Deed Book No. 92, at Page No. 490.

Such lot or parcel is actually part of Lot No. 10 as laid down and designated upon the Plan of said lots laid out for Cyrus K. Fife by J. G. Samsell, Engineer, on May 19, 1898, a Map or Plat of which Plan is of record in said Clerk's Office in Deed Book No: 92, at Page No. 496.

**Parcel Seventeen (Fourth Ward):** Parcel No. 410:

**First Parcel:** All of that certain lot or parcel of land fronting thirty- five (35) feet on the West side of Yoke Street and extending back therefrom with equal and uniform width to Sycamore Street, formerly known as College Avenue, and being part of Lot No. 9, Block A, as the same is laid down and designated on the Official Sales Map or Plat of University Place, a copy of which said Map or Plat is duly recorded in said Clerk's Office in Deed Book No. 270, at Page No. 549.

**Second Parcel:** Beginning at the Northeast corner of the above described lot, which corner is on the South side of said Yoke Street, and running thence with the Southern side of Yoke Street, a distance of ten (10) feet; thence with a line parallel with the First Parcel above described, a distance of forty-five (45) feet; thence with a line parallel with the first line in this description, a distance of ten (10) feet; thence with the Eastern line of the First Parcel herein described, a distance of forty-five (45) feet to the point and place of beginning.

**Third Parcel:** That portion of annulled Sycamore Street which vested in the Grantor by that certain Ordinance of the City of Morgantown adopted on July 19, 2005 and recorded in the aforesaid County Clerk's Office in Deed Book No. 292, at Page No. 1336.

And being the same tracts or parcels of real estate that were conveyed to The City of Morgantown, a municipal corporation, by McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by Deed dated the 1st day of November, 2007, and recorded in said Clerk's Office in Deed Book No. 1357, at Page No. 216.



**Parcel Eighteen (Fourth Ward):**

Beginning at a 1/2-inch by 30-inch iron rod (set) in the Northwesterly right-of-way line of University Avenue, standing as a new corner to the Board of Governors of West Virginia University (Deed Book No. 5, Page No. 144); thence leaving said University Avenue and with new lines of said Board of Governors, N. 25° 02' 30" W. 279.13 feet to a 1/2-inch by 30-inch iron rod (set); thence N. 51° 38' 58" W. 121.13 feet to a point in the Southern right-of-way line of Campus Drive where it interests the Southern right-of-way line of said University Avenue; thence leaving said Campus Drive and with the right-of-way line of said University Avenue, a curve to the right, having a radius of 35.00 feet, Southeasterly 29.40 feet along with curve through an angle of 48° 07' 59" to a point, said curve having a chord bearing and distance of S. 79° 30' 10" E. 28.55 feet; thence S. 55° 26' 11" E. 15.35 feet to a point; thence with a curve to the left, having a radius of 180.00 feet, Southeasterly 128.67 feet along said curve through an angle of 40° 57' 29" to a point, said curve having a chord bearing and distance of S. 75° 54' 55" E. 125.95 feet; thence N. 83° 36' 18" E. 90.82 feet to a point; thence with a curve to the right, having a radius of 70.00 feet Southeasterly 115.48 feet along said curve through an angle of 94° 31' 12" to a point, said curve having a chord bearing and distance of S. 49° 08' 06" E. 102.82 feet; thence S. 01° 52' 30" E. 28.95 feet to a point; thence with a curve to the right, having a radius of 60.00 feet Southwesterly 37.84 feet along said curve through an angle of 35° 47' 28" to a point; said curve having a chord bearing and distance of S. 16° 01' 14" W. 36.87 feet; thence S. 33° 54' 57" W. 183.89 feet to a point; thence with a curve to the left, having a radius of 200.00 feet Southwesterly 11.07 feet along said curve through an angle of 03° 10' 16" to the place of beginning, said curve having a chord bearing and distance of S. 32° 19' 50" W. 11.07 feet, containing 1.00 acres, more or less, as surveyed in January, 2004, by Triad Engineering, Inc., of Morgantown, West Virginia, and shown on a Plat of Survey for The City of Morgantown, Stadium Loop Tract #1, dated January 23, 2004.

**Parcel Nineteen (Fourth Ward, Tax Map 20, Parcel 400):**

Beginning at a 1/2-inch by 30-inch iron rod (set) in the Southerly right-of-way line of Stewart Street, standing as a corner to Michael Pinion deed Book No. 782, at Page No. 297), said road bears S. 73° 08' 53" W. 49.00 feet from a 1/2-inch iron rod (found), standing as a corner to C & S Rentals, Inc. and said Pinion; thence leaving said Stewart Street and with said Pinion S. 14° 17' 13" E. 109.13 feet to a 1 / 2-inch by 30-inch iron rod (set) in the Northern right-of-way line of University Avenue; thence leaving said Pinion and with said University Avenue S. 83° 36' 18" W. 46.33 feet to a point; then with a curve to the right, having a radius of 120.00 feet Northwesterly 68.65 feet along said curve through an angle of 32° 46' 36" to a point, said curve having a chord bearing and distance of N. 80° 00' 21" W 67.72 feet; thence with a curve to the right, having a radius of 30.00 feet Northwesterly 59.89 feet along said curve through an angle of 114° 22' 59" to a point in the Southerly right-of-way line of said Stewart Street, said curve having a chord bearing and distance of N. 06° 25' 33" W. 50.43 feet; thence with said Stewart Street N. 50° 45' 57" E. 8.37 feet to a point; thence with a curve to the right, having a radius of 230.14 feet Northeasterly 96.27 feet along said

curve through an angle of 23° 58' 03" to the place of beginning, said curve having a chord bearing and distance of N. 62° 44' 58" E. 95.57 feet, containing 0.23 acres, more or less, as surveyed in January, 2004, by Triad Engineering, Inc., of Morgantown, West Virginia, and shown on a plat of survey for The City of Morgantown, Stadium Loop Tract #2, dated January 26, 2004.

And being the same tract or parcel of real estate that was conveyed to The City of Morgantown, a municipal corporation, by West Virginia University Board of Governors, On Behalf Of West Virginia University, by Deed dated the 30th day of June, 2004, and recorded in said Clerk's Office in Deed Book No. 1285, at Page No. 67.

**Parcel Twenty:**

**LOT ONE (Fifth Ward Tax Map 20 Parcel 540):**

All of Lot No. 3 of Block A of the Cyrus K Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

**LOT TWO: (Fifth Ward, Tax Map 20. Parcels 543 & 544):**

**Tract One:** All of Lot No. 6 of Block A as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

**Tract Two:** All of Lot No. 18 of Block A as the same is laid down and designated upon the Official Sales Map or Plat of the Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

**LOT THREE: (Fifth Ward, Tax No. 20, Parcel 545):**

The Western one-half of Lot No. 12, Block A. as the same is laid down and designated upon the Official Sales Map or Plat of the Fife Addition a copy of which said Sales Map or Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288, and being part of the same real estate that was conveyed to McCoy 6, a West Virginia general partnership, by the West Virginia University Foundation, Inc. by Deed dated the 18<sup>th</sup> day of February, 1992, and recorded in said Clerk's Office in Deed Book No: 1044, at Page No. 66.

And being part of the same real property conveyed to The City of Morgantown by McCoy 6 Apartments Limited Liability Company by Deed dated the 20<sup>th</sup> day of December, 2004, and recorded in said Clerk's Office in Deed Book No. 1285, at Page No. 39.

**SCHEDULE 1.1(f)**

**NONE**

### SCHEDULE 1.3

#### **Liens, Claims and Encumbrances, Etc.**

#### **MCCOY 6 APARTMENTS LIMITED LIABILITY COMPANY:**

1. Unreleased Consent and Modification Agreement dated February 26, 2003 and recorded on February 26, 2003 in the aforesaid County Clerk's Office in Trust Deed Book 1172, at Page 257, by and among McCoy 6 Apartments, Limited Liability Company, Kristian E. Warner, Benjamin F. Warner, Andrew M. Warner and Monroe P. Warner, Grantors, and First United Bank & Trust, Lender. The coordinating Deed of Trusts recorded in Trust Deed Book 1138, at Page 457 was released by Release recorded in Release Book 369, at Page 143, and Trust Deed Book 1172, at Page 229, was released by Release recorded in Release Book 374, at Page 63, however, this Consent and Modification Agreement was not released by either of these release instruments. Tax Map 20, Parcel 515 and Tax Map 20, Parcel 391.1.
2. Unreleased Credit Line Deed of Trust dated December 30, 2005 and recorded on December 30, 2005 in the aforesaid County Clerk's Office in Trust Deed Book 1438, at Page 196, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to George B. Armistead, Trustee, to secure First United Bank & Trust in an amount not to exceed \$1,400,000.00. This Deed of Trust was subordinated unto that certain Credit Line Deed of Trust dated May 12, 2006 and recorded on May 12, 2006 in the aforesaid County Clerk's Office in Trust Deed Book 1466, at Page 290, by Subordination Agreement dated May 12, 2006 and recorded on May 12, 2006 in the aforesaid County Clerk's Office in Assignment Book 92, at Page 367. Partial Releases were recorded in Release Book 374, at Page 63 and Release Book 384, at Page 545. However, the property which remains unreleased and secured by this Deed of Trust is: Map 26, Parcel 382; Map 20, Parcel 541; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 517; Map 20, Parcel 518; and Map 20, Parcel 519; Map 20, Parcel 520; Map 20, Parcel 522; Map 20, Parcel 527; Map 20, Parcel 528; Map 20, Parcel 531; Map 20, Parcel 532; Map 21, Parcel 23, Map 21, Parcel 57; Map 21, Parcel 56; Map 21, Parcel 39; Map 21, Parcel 24; Map 21, Parcel 38; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 21, Parcel 12, Map 29, parcel 92; Map 26, Parcel 410; Map 20, Parcel 129; and Map 20, Parcel 136; Map 20, Parcel 659.
3. Unreleased Assignment of Rents dated December 30, 2005 and recorded on December 30, 2005 in the aforesaid County Clerk's Office in Assignment Book 90, at Page 456, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to secure First United Bank & Trust in an amount not to exceed \$1,400,000.00. A Partial Release was recorded in Release Book 384, at Page 545. However, the property which remains unreleased and secured by this Deed of Trust is: Map 26, Parcel 382; Map 20, Parcel 541; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 517; Map 20, Parcel 518; and Map 20, Parcel 519; Map 20, Parcel 520; Map 20, Parcel 522; Map 20, Parcel 527; Map 20, Parcel 528; Map 20, Parcel 531; Map 20, Parcel 532; Map 21, Parcel 23, Map 21, Parcel 57; Map 21, Parcel 56; Map 21, Parcel 39; Map 21, Parcel 24; Map 21, Parcel 38; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 21, Parcel 12, Map 29, parcel 92; Map 26, Parcel 410; Map 20, Parcel 129; and Map 20, Parcel 136; Map 20, Parcel 659.

4. Unreleased Credit Line Deed of Trust dated May 12, 2006 and recorded on May 12, 2006 in the aforesaid County Clerk's Office in Trust Deed Book 1466, at Page 290, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to William H. Judy III, Trustee, to secure First United Bank & Trust in an amount not to exceed \$3,052,000.00. Partial Releases were recorded in Release Book 374, at Page 63 and Release Book 384, at Page 545. However, the property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 541; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 517; Map 20, Parcel 518; Map 20, Parcel 519; Map 20, Parcel 532; Map 20, Parcel 533; Map 20, Parcel 542; Map 20, Parcel 545; Map 20, Parcel 547; Map 20, Parcel 512, Map 20, Parcel 415; Map 20, Parcel 409; Map 20, Parcel 559; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 20, Parcel 560; Map 21, Parcel 16; Map 21, Parcel 23; Map 21, Parcel 12; Map 20, Parcel 545.2; Map 20, Parcel 512; Map 20, Parcel 513; Map 21, Parcel 24; Map 21, Parcel 28 or 38; Map 21, Parcel 39; Map 21, Parcel 56; Map 21, Parcel 57; Map 20, Parcel 507; Map 20, Parcel 391; Map 20, Parcel 391.1; Map 20, Parcel 392; Map 20, Parcel 398; Map 20, Parcel 558; Map 20, Parcel 393; Map 20, Parcel 416; Map 20, Parcel 419; Map 20, Parcel 521; Map 25, Parcel 78; Map 20, Parcel 237; Map 20, Parcel 399; Map 8B, Parcel 27.
5. Unreleased Assignment of Rents dated May 12, 2006 and recorded on May 12, 2006 in the aforesaid County Clerk's Office in Assignment Book 92, at Page 378, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to secure First United Bank & Trust in an amount not to exceed \$3,052,000.00. Partial Releases were recorded in Release Book 374, at Page 63 and Release Book 384, at Page 545. However, the property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 541; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 517; Map 20, Parcel 518; Map 20, Parcel 519; Map 20, Parcel 532; Map 20, Parcel 533; Map 20, Parcel 542; Map 20, Parcel 545; Map 20, Parcel 547; Map 20, Parcel 512, Map 20, Parcel 415; Map 20, Parcel 409; Map 20, Parcel 559; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 20, Parcel 560; Map 21, Parcel 16; Map 21, Parcel 23; Map 21, Parcel 12; Map 20, Parcel 545.2; Map 20, Parcel 512; Map 20, Parcel 513; Map 21, Parcel 24; Map 21, Parcel 28 or 38; Map 21, Parcel 39; Map 21, Parcel 56; Map 21, Parcel 57; Map 20, Parcel 507; Map 20, Parcel 391; Map 20, Parcel 391.1; Map 20, Parcel 392; Map 20, Parcel 398; Map 20, Parcel 558; Map 20, Parcel 393; Map 20, Parcel 416; Map 20, Parcel 419; Map 20, Parcel 521; Map 25, Parcel 78; Map 20, Parcel 237; Map 20, Parcel 399; Map 8B, Parcel 27.
6. Unreleased Deed of Trust dated December 13, 2006 and recorded on December 13, 2006 in the aforesaid County Clerk's Office in Trust Deed Book 1520, at Page 360, whereby McCoy 6 Apartments Limited Liability Company and George W. Warner, Sr. by his Power of Attorney Benjamin F. Warner, conveyed a portion of the subject property and other additional collateral to William H. Judy III, Trustee, to secure First United Bank & Trust in the principal amount of \$4,000,000.00. The property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 231; Map 20, Parcel 232; Map 20, Parcel 233; Map 20, Parcel 237; Map 20, Parcel 391.1; Map 20, Parcel 392; Map 20, Parcel 393; Map 20, Parcel 398; Map 20, Parcel 399; Map 20, Parcel 415; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 20, Parcel 512; Map 20, Parcel 513; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 517; Map 20, Parcel 518; Map 20, Parcel 519; Map 20, Parcel 522; Map 20, parcel 523; Map 20, Parcel 532; Map 20, Parcel 533; Map 20, Parcel 541; Map 20, Parcel 542; Map 20, Parcel 545; Map 20, Parcel 545.2; Map 20, Parcel 546; Map 20, Parcel 547; Map 20, Parcel 548; Map 20, Parcel 549; Map 20, Parcel 558; Map 20, Parcel 559; Map 20, Parcel 560; Map 20, parcel 578; Map 21, Parcel 12; Map 21, Parcel 13; Map 21, Parcel 16; Map 21, Parcel 23; Map 21, Parcel 24; Map 21, Parcel 38; Map 21, Parcel 39; Map 21, Parcel 56; Map 21, Parcel 57; Map 8B, Parcel 27; Map 20, Parcel 394; Map 20, Parcel 395; Map 20,

Parcel 396; Map 20, Parcel 397; Map 20, Parcel 403; Map 20, Parcel 404; Map 20, Parcel 404.1; Map 20, Parcel 405; Map 20, Parcel 406; Map 20, Parcel 407; Map 20, Parcel 408; Map 20, Parcel 409; Map 20, Parcel 411; Map 20, Parcel 412; Map 20, Parcel 413; Map 20, Parcel 414; Map 20, Parcel 416; Map 20, Parcel 417; Map 20, Parcel 419; Map 20, Parcel 520; Map 20, Parcel 521; Map 20, Parcel 527; Map 20, Parcel 528; Map 20, Parcel 531; Map 20, Parcel 540; Map 20, Parcel 543; Map 20, Parcel 544; Map 20, Parcel 545.1.

7. Unreleased Assignment of Rents dated December 13, 2006 and recorded on December 13, 2006 in the aforesaid County Clerk's Office in Assignment Book 94, at Page 630, whereby McCoy 6 Apartments Limited Liability Company and George W. Warner, Sr. by his Power of Attorney Benjamin F. Warner, conveyed a portion of the subject property and other additional collateral to secure First United Bank & Trust in the principal amount of \$4,000,000.00. A Partial Release was recorded in Release Book 384, at Page 545. The property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 231; Map 20, Parcel 232; Map 20, Parcel 233; Map 20, Parcel 237; Map 20, Parcel 391.1; Map 20, Parcel 392; Map 20, Parcel 393; Map 20, Parcel 398; Map 20, Parcel 399; Map 20, Parcel 415; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 20, Parcel 512; Map 20, Parcel 513; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 517; Map 20, Parcel 518; Map 20, Parcel 519; Map 20, Parcel 522; Map 20, parcel 523; Map 20, Parcel 532; Map 20, Parcel 533; Map 20, Parcel 541; Map 20, Parcel 542; Map 20, Parcel 545; Map 20, Parcel 545.2; Map 20, Parcel 546; Map 20, Parcel 547; Map 20, Parcel 548; Map 20, Parcel 549; Map 20, Parcel 558; Map 20, Parcel 559; Map 20, Parcel 560; Map 20, parcel 578; Map 21, Parcel 12; Map 21, Parcel 13; Map 21, Parcel 16; Map 21, Parcel 23; Map 21, Parcel 24; Map 21, Parcel 38; Map 21, Parcel 39; Map 21, Parcel 56; Map 21, Parcel 57; Map 8B, Parcel 27; Map 20, Parcel 394; Map 20, Parcel 395; Map 20, Parcel 396; Map 20, Parcel 397; Map 20, Parcel 403; Map 20, Parcel 404; Map 20, Parcel 404.1; Map 20, Parcel 405; Map 20, Parcel 406; Map 20, Parcel 407; Map 20, Parcel 408; Map 20, Parcel 409; Map 20, Parcel 411; Map 20, Parcel 412; Map 20, Parcel 413; Map 20, Parcel 414; Map 20, Parcel 416; Map 20, Parcel 417; Map 20, Parcel 419; Map 20, Parcel 520; Map 20, Parcel 521; Map 20, Parcel 527; Map 20, Parcel 528; Map 20, Parcel 531; Map 20, Parcel 540; Map 20, Parcel 543; Map 20, Parcel 544; Map 20, Parcel 545.1.
8. Agreement dated November 1, 2004 and recorded on December 29, 2006 in the aforesaid County Clerk's Office in Deed Book 1332, at page 174, by and among the City of Morgantown, Morgantown Building Commission, McCoy 6 Apartments Limited Liability Company and First United Bank & Trust.
9. Unreleased Notice of Tax Lien undated but notarized on October 2, 2008 and recorded on October 3, 2008 in the aforesaid County Clerk's Office in City Tax Lien Book 1, at Page 439, against McCoy 6 Apartments Limited Liability Company in favor of The City of Morgantown in the amount of \$3,334.68 plus any and all penalties and interest.
10. Unreleased Abstract of Judgment dated September 22, 2008 and recorded on November 17, 2008 in the aforesaid County Clerk's Office in Judgment Book 45, at Page 406, whereby a Judgment was entered on July 30, 2008 against McCoy 6 Apartments in favor of Copies Copies Copies in the amount of \$713.06 plus court costs of \$80.00 plus interest at a rate of 8.25% from date of judgment. (Magistrate Court of Monongalia County, West Virginia, Case No. 08-C-755).

11. Unreleased Credit Line Deed of Trust, Fixture Filing and Assignment of Rents dated December 19, 2008 and recorded on December 31, 2008 in the aforesaid County Clerk's Office in Trust Deed Book 1669, at Page 213, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property and other additional collateral to Kristian J. Jamieson and Brian D. Gallagher, Trustees, to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. The property which remains unreleased and secured by this Deed of Trust is: Map 8B, Parcel 27; Map 14, Parcel 481; Map 19, Parcel 56.1; Map 19, Parcel 56.2; Map 19, Parcel 56.3; Map 19, Parcel 56.6; Map 20, Parcel 231; Map 20, Parcel 391.1; Map 20, Parcel 392; Map 20, Parcel 393; Map 20, Parcel 398; Map 20, Parcel 399; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 20, Parcel 512; Map 20, Parcel 513; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 522; Map 20, Parcel 523; Map 20, Parcel 532; Map 20, Parcel 533; Map 20, Parcel 541; Map 20, Parcel 542; Map 20, Parcel 545; Map 20, Parcel 545.2; Map 20, Parcel 546; Map 20, Parcel 547; Map 20, Parcel 548; Map 20, Parcel 549; Map 20, Parcel 559; Map 20, Parcel 560; Map 21, Parcel 16; Map 20, Parcel 578; Map 20, Parcel 654; Map 20, Parcel 662; Map 21, Parcel 13; Map 21, Parcel 23; Map 21, Parcel 24; Map 21, Parcel 38; Map 21, Parcel 39; Map 21, parcel 56; Map 21, Parcel 57; Map 26, Parcel 382; Map 26, Parcel 410.
12. Unreleased Collateral Assignment of Rents and Leases dated December 19, 2008 and recorded on December 31, 2008 in the aforesaid County Clerk's Office in Assignment Book 103, at Page 300, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property and other additional collateral to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. The property which remains unreleased and secured by this Deed of Trust is: Map 8B, Parcel 27; Map 14, Parcel 481; Map 19, Parcel 56.1; Map 19, Parcel 56.2; Map 19, Parcel 56.3; Map 19, Parcel 56.6; Map 20, Parcel 231; Map 20, Parcel 391.1; Map 20, Parcel 392; Map 20, Parcel 393; Map 20, Parcel 398; Map 20, Parcel 399; Map 20, Parcel 462; Map 20, Parcel 462.1; Map 20, Parcel 512; Map 20, Parcel 513; Map 20, Parcel 514; Map 20, Parcel 516; Map 20, Parcel 522; Map 20, Parcel 523; Map 20, Parcel 532; Map 20, Parcel 533; Map 20, Parcel 541; Map 20, Parcel 542; Map 20, Parcel 545; Map 20, Parcel 545.2; Map 20, Parcel 546; Map 20, Parcel 547; Map 20, Parcel 548; Map 20, Parcel 549; Map 20, Parcel 559; Map 20, Parcel 560; Map 21, Parcel 16; Map 20, Parcel 578; Map 20, Parcel 654; Map 20, Parcel 662; Map 21, Parcel 13; Map 21, Parcel 23; Map 21, Parcel 24; Map 21, Parcel 38; Map 21, Parcel 39; Map 21, parcel 56; Map 21, Parcel 57; Map 26, Parcel 382; Map 26, Parcel 410.

**AUGUSTA APARTMENTS, LLC (Tax Map 20, Parcel 426):**

13. Unreleased Notice of Tax Lien dated September 26, 2008 and recorded on September 29, 2008 in the aforesaid County Clerk's Office in State Tax Lien Book 47, at Page 12, against Augusta Apartments, LLC in favor of The State of West Virginia, Workforce West Virginia Unemployment Compensation Division in the amount of \$1,113.75, plus any and all penalties and interest.
14. Unreleased Notice of Tax Lien recorded October 3, 2008 and recorded on October 3, 2008 in the aforesaid County Clerk's Office in City Tax Lien Book 1, at Page 441, against Augusta Apartments LLC in favor of The City of Morgantown in the amount of \$6,531.30, plus any and all penalties and interest.

15. Unreleased Notice of Tax Lien dated December 15, 2008 and recorded on December 16, 2008 in the aforesaid County Clerk's Office in State Tax Lien Book 47, at Page 689, against Augusta Apartments, LLC in favor of The State of West Virginia, Workforce West Virginia Unemployment Compensation Division in the amount of \$1,169.44, plus any and all penalties and interest.
16. Unreleased Credit Line Deed of Trust, Fixture Filing and Assignment of Rents dated December 19, 2008 and recorded on January 7, 2009 in the aforesaid County Clerk's Office in Trust Deed Book 1669, at Page 844, whereby Augusta Apartments, LLC conveyed the subject property and other additional collateral to Kristian J. Jamieson and Brian D. Gallagher, Trustees, to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. The property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 426.
17. Unreleased Collateral Assignment of Rents and Leases dated December 19, 2008 and recorded on January 7, 2009 in the aforesaid County Clerk's Office in Assignment Book 103, at Page 445, whereby Augusta Apartments, LLC conveyed the subject property and other additional collateral to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. The property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 426.
18. Unreleased Abstract of Judgment dated January 22, 2009 and recorded on January 29, 2009 in the aforesaid County Clerk's Office in Judgment Book 45, at Page 760, whereby a Judgment was entered on December 29, 2008 against Augusta Apartments, LLC in favor of the A-One Cleaning Services, Inc. in the amount of \$14,446.61 plus court costs of \$160.00 plus interest at a rate of 8.25% from date of judgment. (Circuit Court of Monongalia County, West Virginia, Case No. 08-C-866).
19. Unreleased Abstract of Judgment dated February 24, 2009 and recorded on February 25, 2009 in the aforesaid County Clerk's Office in Judgment Book 45, at Page 833, whereby a Judgment was entered on December 24, 2008 against Augusta Apartments, LLC in favor of the CTL Engineering in the amount of \$3,661 plus court costs of \$96.50 plus interest at a rate of 8.25% from date of judgment. (Circuit Court of Monongalia County, West Virginia, Case No. 08-C-1827).
20. Unreleased Notice of Tax Lien dated June 5, 2009 and recorded on June 16, 2009 in the aforesaid County Clerk's Office in State Tax Lien Book 48, at Page 314, against Augusta Apartments, LLC in favor of The State of West Virginia, State Tax Department in the amount of \$1,106.78, plus any and all penalties and interest.
21. Unreleased Abstract of Judgment dated August 12, 2009 and recorded on August 12, 2009 in the aforesaid County Clerk's Office in Judgment Book 47, at Page 615, whereby a Judgment was entered on July 28, 2009 against Augusta Apartments, LLC in favor of the Landau Building Company in the amount of \$2,000,000 plus court costs of \$185.00 plus interest at a rate of 7.00% from date of judgment. (Circuit Court of Monongalia County, West Virginia, Case No. 09-C-408).
22. Unreleased Notice of Tax Lien dated February 5, 2010 and recorded on February 12, 2010 in the aforesaid County Clerk's Office in State Tax Lien Book 49, at Page 452, against Augusta



Apartments, LLC in favor of The State of West Virginia, State Tax Department in the amount of \$187.19, plus any and all penalties and interest.

**THE SQUARE AT FALLING RUN, LLC:**

23. Unreleased Deed of Trust dated October 5, 1982 and recorded on October 5, 1982 in said Clerk's Office in Trust Deed Book 471, at page 525, whereby Michael A. Hannah conveyed multiple tracts including the subject property unto Oakley J. Hopkins, as Trustee, to secure Nathan G. Corder, Willa Jane Corder, Jane Anne C. Moore and George C. Corder, in the principal amount of \$145,000.00. The aforesaid Deed of Trust was attempted to be released by Release dated June 14, 2002, recorded in said Clerk's Office in Release Book 325, at page 368, however, Willa Jane Corder failed to individually execute the Release (Tax Map 20, Parcel 403).
24. Unreleased Deed of Trust undated but notarized as of September 2, 1988 and recorded on September 2, 1988 in the aforesaid Clerk's office in Trust Deed Book 592, at page 404, from William Perry, a single individual, to David L. Cavender, as Trustee, to secure Margaret J. Little, in the principal sum of *Unknown* Dollars [amount not stated on Deed of Trust] (Tax Map 20, Parcel 540).
25. Unreleased Abstract of Judgment dated September 22, 2008 and recorded on November 17, 2008 in Judgment Book 45, at page 405, whereby a Judgment was entered on August 30, 2008 against The Square at Falling Run in favor of Copies Copies Copies in the amount of \$538.50 plus court costs of \$75.00 plus interest at a rate of 8.25% from date of judgment. (Magistrate Court of Monongalia County, West Virginia, Case No. 08-C-754).
26. Unreleased Credit Line Leasehold Deed of Trust dated November 25, 2008 and recorded on January 7, 2009 in the aforesaid County Clerk's Office in Trust Deed Book 1669, at Page 870, whereby The Square At Falling Run, LLC conveyed a portion of the subject property and other additional collateral to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. The property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcels 394, 395, 396, 397, 407, 408, 409, 416, 417 and 419; Map 20, Parcel 414 and 415; Map 20, Parcels 403, 404, 404.1, 405 and 406 ; Map 20, Parcels 411, 412 and; Map 20, Pt Parcel 397, Tax Map 20, Parcel 520; Map 20, Parcels 521 and Pt 522; Map 20, Parcel 527; Map 20, Parcel 528; Map 20, Parcel 531; Map 20, Parcel 524; Map 20, Parcel 525; Map 20, Parcel 526; Map 20, Parcel 529; Map 20, Parcel 530; Map 20, Parcel 410; 10 x 45 lot; portion of annulled Sycamore Street); Map 20, Parcel 402.2; Map 20, Parcel 400; Map 20, Parcel 540; Map 20, Parcels 543 and 544; Map 20, Parcel 545.1: and Annulled portions of Lee Street and Sycamore Streets.
27. Notice of Lis Pendens dated September 19, 2012 and recorded on September 19, 2012 in said Clerk's Office in Lis Pendens Book 5, at page 568, from The Square At Falling Run, LLC to First United Bank and Trust, the City of Morgantown, et al (United States Bankruptcy Court for the Northern District of West Virginia, Case No. 11-bk-753, In Re: The Square at Falling Run LLC, debtor, and No. 11-AP-60, First United Bank and Trust, Plaintiff, v. The Square at Falling Run LLC, and the City of Morgantown, et al, Defendants).

28. Notice of Lis Pendens dated September 19, 2012 and recorded on September 19, 2012 in said Clerk's Office in Lis Pendens Book 5, at page 576, from McCoy 6 Apartments, LLC, Kristian E. Warner, Benjamin F. Warner, Andrew M. Warner and Monroe P. Warner v. City of Morgantown, WV, et al., Defendants, Civil Action No. 1:10CV54IMK.

**MCCOY 6 AND AUGUSTA:**

29. Unrecorded Agreement dated November 8, 2006, by and among City of Morgantown, Morgantown Building Commission, McCoy 6 Apartments Limited Liability Company, Augusta Apartments, LLC and First United Bank & Trust.

**SCHEDULE 5.4**

**Compliance with Law**

**NONE**

**SCHEDULE 5.7**

**Legal Proceedings**

**NONE**

**SCHEDULE 5.9**

**Consents and Approvals**

**Purchaser's execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby are subject to approval by its governing board.**

**EXHIBIT 8.1**

**Form of Sale Order**

**[Attached]**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

<i>In re:</i>	)	
	)	
AUGUSTA APARTMENTS, LLC,	)	CASE NO. 1:10-bk-00303
	)	
Debtor.	)	Chapter 7
	)	
	)	
McCOY 6, LLC,	)	CASE NO. 1:09-bk-00304
	)	
Debtor.	)	Chapter 7
	)	
	)	
THE SQUARE AT FALLING RUN, LLC,	)	CASE NO. 1:11-bk-00753
	)	
Debtor.	)	Chapter 7

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**ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT  
TO 11 U.S.C. § 363(b), (f), AND (m) AND § 105(a), APPROVING  
COMPROMISE OF LITIGATION PURSUANT TO BANKRUPTCY  
RULE 9019 AND APPROVING DISTRIBUTION OF PROCEEDS**

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THIS MATTER is before the Court on the TRUSTEE'S MOTION FOR ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT TO 11 U.S.C. § 363(b), (f), AND (m) AND § 105(a) AND FOR ORDER PURSUANT TO BANKRUPTCY RULE 9019 APPROVING COMPROMISE OF LITIGATION AND APPROVING DISTRIBUTION OF PROCEEDS (the "Trustees' Motion"), filed by Robert L. Johns, Trustee (the "Trustee") for the bankruptcy estate of Augusta Apartments, LLC ("Augusta"), the bankruptcy estate of McCoy 6, LLC ("McCoy 6"), and the bankruptcy estate of The Square At Falling Run, LLC ("SFR") (collectively, the "Debtors") in the above captioned Chapter 11 cases, the Trustees' Motion, as

approved by this Court, having been served on all parties in interest. The Court having considered the files and records herein and having heard statements of the parties and/or their counsel, and good cause appearing therefor,

**NOW, THEREFORE, THE COURT HEREBY FINDS,<sup>1</sup> THAT:**

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory predicates for the relief sought in the Trustees' Motion and the basis for the approvals and authorizations herein are (i) Sections 105 and 363(b), (f) and (m) of the Bankruptcy Code and (ii) Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") 2002, 6004, 9006, 9007, 9008, 9014 and 9019.

D. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

E. Proper, timely, adequate and sufficient notice of the Trustees' Motion and the hearing on the Trustees' Motion (the "Sale Hearing") have been provided in accordance with §§ 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, 9014 and 9019; such notice was good and sufficient and appropriate under the particular circumstances; and no other or further notice of the Trustees' Motion, the hearing on the Trustees' Motion, or of the entry of this Order is necessary or shall be required.

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<sup>1</sup> In accordance with Bankruptcy Rule 7052, when appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.



F. A reasonable opportunity to object or be heard with respect to the Trustees' Motion and relief requested therein has been afforded to all parties-in-interest, and third parties have had a full, fair and reasonable opportunity to make a higher or otherwise better offer to purchase the assets that are the subject of the Trustees' Motion as follows and as more specifically defined in that certain Asset Purchase Agreement attached to the Trustee's Motion (the "Purchase Agreement") entered into by the Trustee, on behalf of Augusta, McCoy 6 and SFR, First United Bank and Trust ("First United"), and the West Virginia University Board of Governors, on Behalf of West Virginia University, a State Institution of Higher Education ("Purchaser");

1. The Sale: (i) real property and improvements thereon consisting of approximately 21 acres of land in the Falling Run Road Area of Morgantown, West Virginia, as described in Schedule 1.1(a) (owned by Augusta) and Schedule 1.1(b) (owned by McCoy 6), attached to and made a part of this Order (the "Debtor Land"); certain easements and rights of way; certain tangible personal property and fixtures located on the Debtor Land and used in connection with the structures on the Debtor Land; all permits, licenses, certificates and other authorizations relating to and necessary in connection with the Debtor Land; and other assets associated with the Debtor Land owned by Augusta and McCoy 6, and (ii) all of the Trustee's right, title and interest in and to the Ground Lease (the "SFR Lease") dated April 17, 2008, among the Morgantown Building Commission (the "Building Commission"), the City of Morgantown, West Virginia (the "City") and SFR (as amended by Amendment of Lease dated August 19, 2008, from the Building Commission to SFR) covering approximately 4.25 acres of

vacant land owned by the Building Commission and the City, as described on Schedule 1.1(c) attached to and made a part of this Order (collectively, the “Purchased Assets”).<sup>2</sup>

2. The Compromise: In addition to the sale of the Debtor Land and the SFR Lease, the Purchase Agreement provides for the compromise of certain of the Trustee’s claims in three sets of lawsuits: (i) an adversary proceeding pending in the SFR bankruptcy case (1:11-ap-60; *First United Bank & Trust v. The Square At Falling Run, LLC, et al.*, the “SFR AP”); (ii) two civil actions relating to the McCoy 6 case (1:11-cv-00054 and 1:11-cv-00055; *McCoy 6 Apartments, LLC, Augusta Apartments, LLC, Kristian E. Warner, et al. v. City of Morgantown, WV, Daniel Boroff, et al.*, the “City Lawsuit”); and, (iii) as against First United, in two adversary proceedings pending in the McCoy 6 bankruptcy case brought by the Trustee against First United and other parties (1:11-ap-00071 and 1:11-ap-00072), in which the Trustee seeks to avoid certain transactions and recover proceeds of these transactions from, *inter alia*, First United (the “§548 Lawsuits”). The Trustee (of McCoy 6) seeks authority to dismiss all of his claims in the City Lawsuit for the sum of \$75,000, payable to First United as the holder of a first priority security interest in such proceeds (the “Settlement Payment”). In connection with his sale of all right, title and interest in and to the SFR Lease to WVU, the Trustee (of SFR) seeks authority to settle all claims in the SFR AP, by withdrawing his defenses and dismissing with prejudice his counterclaims, with the Bank dismissing its claims with prejudice and the City and Building Commission being dismissed from the SFR AP without prejudice to their position that the SFR Lease has been terminated or is terminable. Finally, the Trustee (of McCoy 6) seeks authority to compromise his claims against First United in the §548 Lawsuits in a manner

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<sup>2</sup> Notwithstanding other provisions of this Order, to the extent the description of the Purchased Assets set forth herein differs from that set forth in the Purchase Agreement, the terms of the Purchase Agreement shall govern.

which effectively results in no recovery by the Trustee against First United in the §548 Lawsuits, but preserves his claims against the other Defendants (collectively, the “Trustee Compromises”).

G. The Trustee has demonstrated a sufficient basis for and has reasonably exercised its sound business judgment in deciding to enter into the Purchase Agreement, to sell and transfer the Purchased Assets to the Purchaser and to enter into the Trustee Compromises. The relief requested in the Trustee’s Motion is in the best interests of the respective Debtors’ Estates, their creditors, and other parties in interest.

H. The Purchased Assets have been adequately and sufficiently marketed and other potential purchasers have had a full and fair opportunity to make an offer for the Purchased Assets; and the Trustee Compromises, which are part and parcel of, and a condition precedent to, the sale of the Purchased Assets, are fully justified, fair and equitable and in the best interests of the respective Debtor’s Estates.

I. The terms and conditions set forth in the Purchase Agreement and the transactions contemplated thereby represent fair and reasonable terms and conditions, including the amount of the Purchase Price, and constitute the highest and best offer obtainable for the Purchased Assets, constitute the reasonably equivalent and fair market value for the Purchased Assets, and are otherwise fair and adequate under the facts and circumstances before this Court.

J. The aggregate purchase price for the Purchased Assets is Four Million Seven Hundred Forty-Five Thousand Dollars (\$4,745,000.00) cash<sup>3</sup>, plus payment of Trustee’s Commissions and certain expenses, as described in Sections 3.1(d), (e) and (f) of the Purchase Agreement (the “Purchase Price”), payable by wire transfer at the closing of the transactions, and payable in the amount of (i) \$100,000 for the Augusta Lot plus up to \$20,000 to satisfy liens

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<sup>3</sup> This sum includes WVU’s obligation to pay up to \$20,000 to discharge liens senior to the lien of First United on the Assets of Augusta, as described in Section 3.1(d) of the Purchase Agreement.

superior in priority to First United's Deed of Trust<sup>4</sup>, (ii) \$4,425,000 for the McCoy 6 Parcels, and (iii) \$200,000 (x) for all of the Trustee's right, title and interest in and to the SFR Lease and (y) to compromise the SFR AP. From these transactions, First United will receive \$100,000 proceeds from the sale of the Augusta Lot, \$4,370,000 proceeds from the sale of the McCoy 6 Parcels and \$200,000 from the sale of the SFR Lease/compromise of the SFR AP. In addition, First United, as holder of a lien on the SFR Lease and SFR assets, will receive the funds in the SFR operating account less certain of the Trustee's expenses such as legal fees, commissions and operating expenses (but in no event less than \$42,500), as specified in Section 3.3 of the Purchase Agreement.

K. The total consideration provided by the Purchaser for the Purchased Assets is the highest and best offer received by the Trustee, and the Purchase Price constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) under any other applicable laws of the United States, any state, territory or possession or the District of Columbia, reasonably equivalent value, fair consideration and fair value for the Purchased Assets.

L. The Purchaser is a purchaser in good faith, as that term is used in the Bankruptcy Code and court decisions thereunder, and is entitled to the protections of Section 363(m) of the Bankruptcy Code. The Purchase Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind, and the sales process was conducted in good faith. The Court has found that the Purchaser has acted in good faith in

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<sup>4</sup> If the liens on the Augusta Lot exceed \$20,000, WVU has the right to elect not to purchase the Augusta Lot, but instead pay an additional \$100,000 to McCoy 6 for the McCoy 6 Parcels, in which case the \$100,000 is payable to First United, however, the Trustee believes that such liens do not exceed \$20,000.

all respects in connection with this case and the transactions under the Purchase Agreement in that, among other things:

- (1) The Trustee conducted the sale process and negotiated with the Purchaser and First United;
- (2) The Purchaser and First United recognized that the Trustee was free to negotiate with any other party that expressed qualified interest in purchasing the Purchased Assets; and
- (3) All payments to be made by the Purchaser and other agreements or arrangements entered into by Purchaser and First United with the Trustee in connection with the Purchase Agreement have been disclosed.

M. In the absence of a stay pending appeal, the Purchaser and First United will be acting in good faith, pursuant to Section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the Purchase Agreement at any time on or after the entry of the Order.

N. The Purchaser has not violated Section 363(n) of the Bankruptcy Code by any action or inaction. The Purchase Price to be paid by Purchaser was not controlled by an agreement among potential purchasers at any sale or through any bidding or negotiating process. The transactions under the Purchase Agreement may not be avoided, and no damages may be assessed against the Purchaser or any other party under Section 363(n) of the Bankruptcy Code or any other applicable bankruptcy or non-bankruptcy law.

O. The Purchaser would not have agreed to the sale expressed in the Purchase Agreement and would not consummate the transactions contemplated thereby and under this

Order if the sale of the Purchased Assets to the Purchaser was not free and clear of all Interests (as defined in paragraph 15 below) of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Interests.

P. Except as may otherwise be provided in this Order, the Trustee may sell the Purchased Assets free and clear of all Interests because, in each case, one or more of the standards set forth in Section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Interests and (ii) non-Debtor parties, who did not object, or who withdrew their objections, to the sale of the Purchased Assets and the Trustee's Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. With respect to any and all entities with an Interest in or against the Purchased Assets either (i) applicable nonbankruptcy law permits the sale free and clear of such Interest, (ii) such Interest is in bona fide dispute, or (iii) such entity could be compelled to accept a money satisfaction of such Interest, so that the conditions of Section 363(f) of the Bankruptcy Code have been met, and such entities are adequately protected by having their Interests, if any, attach to the proceeds of the sale of the Purchased Assets.

Q. The Interests could be discharged under the Bankruptcy Code, so that the Purchased Assets can be sold free and clear of those Interests under Section 105(a) of the Bankruptcy Code.

R. The sale and transfer of the Purchased Assets constitute transfers pursuant to the Bankruptcy Code, which shall not be taxed under any law imposing a stamp tax or similar tax.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Trustee's Motion is granted. All objections to the Trustee's Motion or the relief requested therein have been withdrawn, or are hereby overruled on the merits for the reasons stated by the Court on the record at the Sale Hearing.

2. Notice of the Sale Hearing and Trustee's Motion was proper, timely, fair, and adequate under the circumstances and complied with the Bankruptcy Code and the Bankruptcy Rules.

### **Approval of Sale**

3. The Trustee has established sound business justifications in support of the Sale. After considering the circumstances of this case, the Court determines that the Purchase Price presents the best opportunity for the Debtors' estate to realize the highest distribution possible to all creditors. The Purchase Price, as approved herein, is the highest and best offer for the Purchased Assets. The Purchase Price constitutes full and adequate consideration and reasonably equivalent and fair market value for the Purchased Assets. The transfer of the Purchased Assets on the Closing to Purchaser for the Purchase Price is in the best interest of the Debtors' estate, their creditors and all parties-in-interest.

4. The Purchase Agreement is hereby approved in all respects and shall be deemed in full force and effect, binding and benefiting the Trustee, the Debtors, First United and the Purchaser, and the transactions contemplated thereby be, and hereby are, authorized and approved in all respects. The Purchase Agreement and any documents executed in accordance with its terms shall not be subject to rejection.

5. Pursuant to the provisions of Sections 105 and 363 of the Bankruptcy Code, the Trustee is authorized, empowered and directed to implement and consummate all of the transactions (the "Sale") contemplated by the Purchase Agreement with First United and the

Purchaser and to sell the Purchased Assets, as described in the Purchase Agreement, to Purchaser for the Purchase Price.

6. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Trustee to sell and transfer the Purchased Assets to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

7. Any amounts that become payable by the Debtors to the Purchaser pursuant to the Purchase Agreement (and related agreements executed in connection therewith) as of the date of the completion of the closing (“Closing”) of the Sale (“Closing Date”) shall constitute allowed administrative expenses of the Debtors’ estate and shall be paid by the Debtors in the time and manner provided for in the Purchase Agreement.

8. The Trustee has carried the burden of demonstrating that the proposed sale will aid the Debtors’ liquidation or reorganization, and the Trustee has met the established standards regarding sales outside the ordinary course of business pursuant to Section 363(b)(1) of the Bankruptcy Code.

9. The transactions contemplated in the Trustee’s Motion, as approved and implemented herein, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including but not limited to Sections 363(b), (f) and (m).

10. The Trustee Compromises are fair and reasonable and in the best interests of the McCoy 6 and SFR bankruptcy estates for the reason, in part, that they are a condition to the larger overall transaction; moreover, the Trustee Compromises are inherently fair and justified under the circumstances of this case. The payment of \$75,000 to the Trustee in settlement of the City Lawsuit saves the McCoy 6 bankruptcy estate significant expense and delay from the



prosecution of questionable and uncertain claims. The resolution of the SFR Lawsuit, which is extremely complicated, could take years through the court system and result in significant legal fees and related expenses, is unquestionably reasonable and reflects appropriate business judgment on the part of the Trustee. The compromise of the Trustee's (McCoy 6) claims against First United in the §548 Lawsuits is a condition to and requirement of First United's consent to the Trustees' Proposed Sale. Moreover, such compromise will not affect the Trustees' ability to assert his claims against the other defendants in the §548 Lawsuits, and it is unlikely that the settlement will result in materially less recovery in the §548 Lawsuits.

### **Good Faith**

11. The Purchaser is a third party purchaser unrelated to the Trustee or the Debtors, and the terms of Purchaser's purchase of the Purchased Assets as set forth in the Purchase Agreement are fair and reasonable under the circumstances of this case.

12. The transfer of the Purchased Assets to Purchaser represents an arms-length transaction and has been negotiated in good faith between the parties. Purchaser, as transferee of the Debtors' property, is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of Section 363(m) of the Bankruptcy Code. Purchaser has proceeded in good faith in all respects in connection with this proceeding in that:

(a) The Purchaser recognized that that Trustee was free to deal with any other party interested in acquiring the Purchased Assets;

(b) All payments to be made by Purchaser in connection with the transaction have been disclosed; and

(c) The Purchaser has not violated Section 363(n) of the Bankruptcy Code by any action or inaction.

13. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith buyer under Section 363(m) of the Bankruptcy Code, including that in the absence of a stay of this Sale Order, if Purchaser elects to close under the Purchase Agreement at any time after entry of this Sale Order, then, Purchaser shall be entitled to the protections of Section 363(m) of the Bankruptcy Code if this Sale Order or an authorization contained herein is reversed or modified on appeal.

**Free and Clear Sale**

14. Pursuant to Section 363(f) of the Bankruptcy Code and this Court's general equitable powers under Section 105(a) of the Bankruptcy Code, upon the Closing of the Sale, Purchaser shall take title to and possession of the Purchased Assets, free and clear of the Interests, and Purchaser shall not assume or be obligated to pay, perform or otherwise discharge and shall have liability or responsibility arising under or related to the Interests.

15. As set forth in the Purchase Agreement and Trustee's Motion, the "Interests" of which the Purchased Assets are sold free and clear, include, without limitation, recorded or unrecorded, asserted or unasserted, known or unknown as of the applicable Closing, now existing or hereafter arising, fixed or contingent, interests, liens, claims, encumbrances, pledges, mortgages, security interests, conditional sale or other retention agreements, obligations, guaranties, debts, rights, contractual commitments, judgments, demands, easements, charges, defects, options, rights of first refusal, and any other restrictions or interests of any kind or nature whether imposed by agreement, understanding, law, equity, or otherwise, including, without limitation:

(a) those liabilities specifically retained by the Debtors pursuant to Section 2.1 of the Purchase Agreement;

(b) obligations, debts, liabilities or claims incurred as a result of the use, status, operation, leasing, ownership or management of any of the Purchased Assets or the actions, omission, claims or choses in action of the Debtors or their predecessors prior to the Closing, or any accident, injury or death occurring prior to the Closing;

(c) any and all obligations and/or liabilities to the extent attributable to defaults, conditions, status, events, actions or omissions or accidents, claims, injuries, deaths or other damages occurring prior to the Closing;

(d) any fines, assessments or penalties assessed against or payable by the Debtors for violations that occurred prior to the Closing Date;

(e) any mortgages, unrecorded claims in or against real estate, security interests, options, liens or encumbrances of any kind, including any administrative expenses or priority claim asserted herein and any interest of a party to a title retention arrangement intended as security;

(f) any demands or claims of creditors of, or claims against, the Debtors;

(g) any interests of shareholders, members or other interests in the Debtors;

(h) claims of lessees under leases with the Debtors, whether entered into before or after the date of the respective Debtors' bankruptcy petitions;

(i) any person claiming through, by or on behalf of the Debtors, whether such claim, demand, lien or interest be direct or indirect, known or unknown, or claiming that the Purchaser is a successor or successor-in-interest or pursuant to any other theory, including without limitation any and all obligations, liabilities, conditions, covenants, requirements or responsibilities under: (i) any agreement, indenture, grant agreement, or other contract with the City of Morgantown, The Morgantown Building Commission, the West Virginia Economic

Development Authority or any other governmental agency or authority, or with an lender, creditor or any other entity or individual; (ii) The Square At Falling Run Planned Unit Development and/or the Outline Plan for The Square At Falling Run Planned Unit Development; or (iii) any other agreement, indenture, or similar contract pertaining to The Augusta on the Square, and/or The Square At Falling Run; (iv) any employment or labor agreements; (v) any and all obligations and/or liabilities arising out of or incurred with respect to any of the Debtors' employees, former employees, agents or consultants, employment contracts, compensation agreements, employee benefit plans, or any other obligations (including but not limited to unemployment, disability, severance, pension, health, medical, life, dental, or workers' compensation or disease obligations) owed to or covering any employee, former employee, agent or consultant of the Debtors or their predecessors; (vi) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claims, including, without limitation, claims that might otherwise arise under or pursuant to (A) the Employee Retirement Income Security Act of 1974, as amended, (B) the Fair Labor Standards Act of 1938, as amended, (C) Title VII of the Civil Rights Act of 1964, as amended, (D) the Federal Rehabilitation Act of 1973, as amended, (E) the National Labor Relations Act, as amended, (F) the Worker Adjustment and Retraining Act, as amended, (G) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act of 1967, as amended, (H) the Americans with Disabilities Act of 1990, as amended, (I) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), (J) the Jones Act, as amended,<sup>5</sup> (K) the Longshoremen's and Harbor Workers' Compensation Act, as amended, (L) state discrimination laws, (M) state unemployment compensation laws or any other similar state laws, or (N) any other state or federal benefits or claims relating to any employment with the Debtors or any

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<sup>5</sup> The Jones Act, formerly codified at 46 U.S.C. 688, was recently recodified to 46 U.S.C. §§ 30104, 30105.

predecessors; (vii) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims; (viii) environmental or other claims or liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste located on or below the surface of the real property portion of the Purchased Assets) that may be asserted on any basis, including, without limitation, under (a) the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 U.S.C. §§ 1251 *et seq.*; (b) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9601 *et seq.*; (c) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 *et seq.*; (d) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; (e) and in the regulations adopted and publications promulgated pursuant thereto, or in any other federal, state or local environmental law, ordinance, rule or regulation; (ix) any bulk sales or similar law; (x) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (xi) successor or vicarious liabilities of any kind or character;

(j) any theory of antitrust, labor law, de facto merger or substantial continuity; and

(k) liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the applicable Purchased Assets prior to the Closing; and

(l) claims against any of its Debtors' predecessors or affiliates.

Provided however, Purchaser shall not be relieved of liability with respect to obligations accruing from and after the Closing.

16. Except as expressly provided for in this Order or the Purchase Agreement, the Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets. Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of Interests, and absent the provisions of this Order providing for a sale free and clear of Interests, Purchaser would not have purchased the Purchased Assets. The consideration given by Purchaser shall constitute valid and valuable consideration for the releases of the Interests, which releases shall be deemed to have been given in favor of Purchaser by all holders of Interests against the Debtors or the applicable Purchased Assets.

17. Effective on the Closing Date, all persons and entities, to the extent allowed by law, are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, based upon or with respect to an Interest of which the sale of the Purchased Assets is free and clear under the terms of this Order, including, without limitation, the following actions:

(a) Commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors, assets or properties;

(b) Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, its successors, assets or properties;

(c) Creating, perfecting or enforcing any lien or other encumbrance against the Purchaser, its successors, assets or properties;

(d) Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its successors;

(e) Commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the Purchase Agreement or actions contemplated or taken in respect thereof; or

(f) Revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

18. Purchaser does not constitute a successor to the Debtors by reason of any theory of law or equity because:

(a) Except as otherwise set forth in the Purchase Agreement, Purchaser is not expressly or impliedly agreeing to assume any of the Debtors' liabilities or debts;

(b) The transactions contemplated by the Purchase Agreement do not amount to a consolidation, merger or de facto merger of Debtors and Purchaser;

(c) Purchaser is not merely a continuation of the Debtors; and

(d) The transactions contemplated by the Purchase Agreement are not being entered into fraudulently or in order to escape liability from the Debtors' debts.

#### **Transfer of Purchased Assets**

19. Subject to the fulfillment of the terms and conditions of the Purchase Agreement, at the Closing, the Trustee will sell, transfer, assign and convey to the Purchaser and/or its assigns all of the Debtors' rights, title and interest in, to and under the Purchased Assets.

20. The Trustee is authorized, empowered and hereby directed to fully perform under, consummate and implement the terms of the Purchase Agreement together with any and all additional acts, instruments, and documents that may be reasonably necessary or desirable to implement and carry out the terms and intent of the Purchase Agreement, this Sale Order, and the sale of the Purchased Assets contemplated thereby and to take all further actions as may

reasonably be requested by the Purchaser in order to consummate, evidence, or confirm the provisions contained in such documents or for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession in the Purchaser any or all of the Purchased Assets without any further corporate action or orders of this Court, including without limitation delivery of special warranty deeds, bills of sale, assignments, and other such documentation to evidence the transfers required herein.

21. The Purchaser shall have no obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to its obligations to do so have been met, satisfied, or waived.

22. The Purchaser may consummate the transactions under the Purchase Agreement at any time after the entry of this Order (including immediately thereafter) by waiving all closing conditions set forth in the Purchase Agreement that have not been satisfied and by proceeding to close such transactions, without any notice to the Court, any pre-petition or post-petition creditor of the Debtors, or any other party in interest.

23. Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the relevant Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are directed to be transferred to Purchaser as of the Closing Date, except to the extent otherwise provided in the Purchase Agreement. Without limitation of the foregoing, the Trustee shall cooperate in the transfer of such permits, licenses, registrations, approvals, and authorizations to the Purchaser.

24. At the Closing, the Purchase Price and the Settlement Payment paid to the Trustee shall be disbursed upon the Trustee's specific written instructions for estate disbursements by



checks or wire transfers from the closing attorney, Jackson Kelly PLLC's, Client Trust Account as follows:

- (a) Payment of all normal and ordinary settlement charges;
- (b) Payment of the Debtors' share of the real estate taxes;
- (c) Payment of Trustee's costs of the sale;
- (d) Payment of an aggregate of \$4,787,500 to First United (allocated to the respective Debtors as specified in the Purchase Agreement and as described in paragraph J. of this Order) plus any additional sums remaining in the SFR bank account at Closing and payable to First United, in accordance with Section 3.3 of the Purchase Agreement;
- (e) Payment of up to \$20,000 to satisfy (x) two tax liens against the Augusta Lot in favor of The State of West Virginia, Workforce West Virginia, in the respective amounts of \$1,113.75 and \$1,169.44 plus interest and costs and (y) a tax lien against the Augusta Lot in favor of The City of Morgantown in the amount of \$6,531.30 plus interest and costs;
- (f) Payment to satisfy the judgment lien of Copies Copies Copies against SFR, of the sum of \$613.50 plus interest from August 30, 2008 at 8.5%; and
- (g) Payment to Robert J. Johns of the sums paid by Purchaser for the Trustee's statutory commission, as specified in Section 3.1(d), (e) and (f) of the Purchase Agreement; not to exceed the Trustee's statutory commission payable under 11 U.S.C. § 326(a);
- (h) Payment of the remainder of the Purchase Price into the Debtor's respective accounts, to be held pending further orders by the Court.

Neither Purchaser nor Jackson Kelly PLLC will be liable for any disbursements made in accordance with the Trustee's written instructions.

25. The Trustee is authorized to cooperate with Purchaser in order for Purchaser to obtain quiet enjoyment of the Purchased Assets including putting Purchaser into full possession of the Purchased Assets. Except as otherwise expressly provided in this Order, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

26. Effective as of the Closing, the Purchaser, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Purchaser, its successors and assigns, to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Purchaser, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Purchaser, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and to do all acts and things with respect to the Purchased Assets which the Purchaser, its successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Trustee.

27. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Interests shall be self-executing, and neither the Trustee nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order. Without limitation of the foregoing, a certified copy of this Order may be filed with the appropriate Clerk and/or recorded with the appropriate Recorder to act to cancel any Interests of

record. The filing or recording of this Order shall provide full notice of the contents of the Order. In addition, on or before the Closing Date, all parties holding Interests of any kind are authorized and directed to execute such documents and to take all other actions as may be necessary to document the release of any Interests of any kind against the Purchased Assets. If any person or entity that has filed financing statements or other documents or agreements evidencing any Interests in or against the Purchased Assets shall not have delivered to the Purchaser, within a reasonable time after request therefore, termination statements, instruments of satisfaction, or releases of all such Interests with respect to the Purchased Assets, the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets.

28. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Purchaser under the Purchase Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

29. Except as expressly provided in this Order, the Purchaser is not assuming nor shall they nor any affiliate or subsidiary of it be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the transactions contemplated by the Purchase Agreement, or any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Purchase Agreement, which liabilities, debts, and obligations are Interests

and are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any affiliate or subsidiary of the Purchaser.

### **Additional Provisions**

30. This Order is and shall be binding upon and govern the acts of all entities to the extent allowed by law, including, without limitation, all filing agents, filing officers, county clerks, title agents, title companies, recorders of deeds of trust, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

31. The Purchaser has not assumed and is otherwise not obligated for any of the Debtors' liabilities other than as provided in this Order.

32. The transfer of the Purchased Assets, and the execution and delivery of any instrument of transfer by the Debtors pursuant to the Purchase Agreement or this Order shall not be taxed under any law imposing a real estate tax, transfer tax, recording tax, sales tax, a stamp tax, or a similar tax.

33. The automatic stay provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Purchase Agreement and the provisions of this Order.

34. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance

with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estate.

35. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the Purchase Agreement.

36. There were no brokers involved with the negotiation or consummation of the Purchase Agreement, and, therefore, the Trustee, the Debtors, the Purchaser and First United shall not be liable for any brokers' commissions.

37. Notwithstanding Bankruptcy Rules 6004 and 7062, this Order shall not be stayed and shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser are free to close under the Purchase Agreement at any time, including immediately upon entry of this Order, subject to the terms of the Purchase Agreement. If, in the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser close under the Purchase Agreement, the Purchaser shall be deemed to be acting in "good faith" and shall be entitled to the protections of § 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Purchase Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

38. To the extent any provisions of this Order conflict with the terms and conditions of the Purchase Agreement, the terms and conditions of this Order shall govern and control, except where the provisions of the Order specify that the provisions of the Purchase Agreement control.

39. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

40. This Court shall retain jurisdiction even after the closing of this case to:

(a) Interpret, implement and enforce the terms of this Order and the Purchase Agreement, all amendments thereto and any waivers or consents thereunder and each of the agreements executed in connection therewith in all respects;

(b) Decide any disputes concerning this Order, the Purchase Agreement or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and all issues and disputes arising in connection with the relief authorized herein;

(c) Protect the Purchaser, First United, and the Purchased Assets against any of the Interests as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability;

(d) Enter orders in aid or furtherance of (i) the transfer of possession and control from the Trustee to the Purchaser and (ii) the transactions contemplated by the Purchase Agreement or to ensure the peaceful use and enjoyment of the Purchased Assets by the Purchaser;

(e) Compel delivery of all Purchased Assets to the Purchaser;

(f) Adjudicate any and all disputes concerning alleged Interests in and to the Purchased Assets including the extent, validity, enforceability, priority, and nature of any such alleged Interests; and

(g) Adjudicate any and all disputes relating to the right, title or interest of the Debtors or the Estate in the Purchased Assets and the proceeds thereof.

41. The Clerk is directed to transmit copies of this Order to the parties-in-interest.

Submitted by:

/s/ Robert L. Johns

Wendel B. Turner [WV S.B. # 3823]

Robert L. Johns [WV S.B. # 5161]

TURNER & JOHNS, PLLC

216 Brooks Street, Suite 200

Charleston, WV 25301

*Counsel for the Trustee*

**SCHEDULE 1.1(a)**

**Description of Augusta Real Property**

<b><u>Map:</u></b>	<b><u>Parcel:</u></b>	<b><u>Description:</u></b>	<b><u>Recording Information:</u></b>
20	426	Part Lot 5, Hoffman Addition, Fourth Ward 357 Falling Run Road	DB 1336/480



**SCHEDULE 1.1(b)**

**Description of McCoy 6 Real Property**

<b><u>Map:</u></b>	<b><u>Parcel:</u></b>	<b><u>Description:</u></b>	<b><u>Recording Information:</u></b>
8B	27	Lots 4,5,6,7 BW Harris Addition – Braddock St, Morgan District	DB 1317/184
14	481	Lot 15 x 118, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Eight therein)
20	231	Lot 14 (23) – 14 Jones/305 Stewart, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixty therein)
20	391.1	Pt Lot 11 or .0477 Ac, Hoffman Addition – Yoke Street, Fourth Ward	DB 1247/115
20	392	Pt Lot 11 or .0516 Ac, Hoffman Addition – Stewart Street, Fourth Ward	DB 1244/1
20	393	Pt Lot 11, Hoffman Addition, 33& 33 ½ Yoke St, Fourth Ward	DB 1206/466
20	399	Lot 29, Beauty Terrace Addition - 254 Stewart St, Fourth Ward	DB 1317/187
20	415	Pt Lots 9 & 10 & Strip, Block A, Univ. Pl Add #2, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty therein)
20	462	Lot 250 x 262 Irr – 25 Glenn St, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
20	462.1	Lot 125 x 262 Irr, Braddock Street and Falling Run Road, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
20	507	Bl 6, Lots 40 to 45 Inc, University Place Addition #2 – 26 Outlook, Fifth Ward	DB 1311/113
20	512	Bl 6, Lot 8, University Place Addition #2, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Two therein)
20	513	Bl 6, Lot 7, University Place Addition #2, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Two therein)
20	514	Bl 6, Lot 6, University Place Addition #2 - 348 Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty One therein)

<b>Map:</b>	<b>Parcel:</b>	<b>Description:</b>	<b>Recording Information:</b>
20	P/O 516	P/O Bl 6, Lots 3,4,5, University Place Addition #2 - 348 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty therein)
20	P/O 517	P/O Bl 6, Lots 1,2, University Place Addition #2 - 336 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Twenty Nine therein)
20	P/O 518	P/O Bl B, Lot Pt 8, Fife Addition - 332 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Five therein)
20	P/O 519	P/O Bl B, Lot Pt 7,8, Fife Addition - 328 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Four therein)
20	522	Bl B, Lot 4, Fife Addition - 312 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Forty Six therein)
20	523	Bl B, Lot 3, Fife Addition - 308 Falling Run Road, Fifth Ward	DB 1224/254
20	532	Bl B, Lot 12, Fife Addition - 1872 University Avenue, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifteen therein)
20	533	Lot 13, Hayes Addition - 1866 University Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Forty One therein)
20	541	Bl A, Lot 4, Hayes Addition - 725 College Ave, Fifth Ward	DB 1177/587
20	542	Bl A, Lot 5, Hayes Addition - 727 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Twenty Five therein)
20	545	Bl A, Lots 13 - 17, Fife Addition - College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Six therein)
20	545.2	Bl A, Lots 11 & Pt of Lot 12, Fife Addition - 747 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Three therein)
20	546	Bl A, Lot 10, Fife Addition - 749 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. One therein)
20	547	Bl A, Lot 9, Fife Addition - 751 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Two therein)
20	548	Bl 6, Lts 51 thru 56, Pt Lot 57, University Place Addition #2, Fifth Ward	DB 1219/207
20	549	Bl 6, Part of Lt 57, University Place Addition #2, Fifth Ward	DB 1219/207
20	558	Bl 1, Lots 4-11 Inclusive, Wilson Addition - 50	DB 1233/290

<b>Map:</b>	<b>Parcel:</b>	<b>Description:</b>	<b>Recording Information:</b>
		Outlook Street, Fifth Ward	
20	559	Lot 80 x 200 – 551 Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
20	560	Lot 1-B, Wilson Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
20	578	Bl B, Lot 3, Pt Lts 2&4, Atwood Addition – 820 College Ave, Fifth Ward	DB 1219/204
20	663	P/O Annulled Rainy St, Fifth Ward	DB 1312/350
21	12	6.0 Ac - 684 Braddock Street, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
21	16	3.35 Ac, Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
21	23	2.95 Ac, College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Seventeen therein)
21	24	Bl 14, Lots 10, 11, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	38	Bl 11, Lots 19 to 22, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	39	Bl 10, Lots 15 to 19, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	56	Bl 7, Lots 17-19, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	57	Bl 6, Lots 10 to 14, All Undeveloped Prop, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)

## SCHEDULE 1.1(c)

### **Description of SFR Property**

The property underlying and subject to the SFR Lease is more particularly described as follows:

All of the following described lots or parcels of real estate, together with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying, and being in the Fourth and Fifth Wards of The City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows, to-wit:

**University Place No 1 (Fourth Ward):** Plat recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 270, at Page No. 549.

**Parcel One - Block A (Fourth Ward, Tax Map 20, Parcels 394, 395, 396, 397, 407, 408, 409, 416, 417, and 419):** All of Lot Nos. 2, 3, 4, 5, 6, 7, 8, 11, 12, and 13, Block A, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Flat is recorded in said Clerk's Office in Deed Book No. 270, at Page No. 549.

**Parcel Two (Fourth Ward, Tax Map 20, Parcels 414):** The following portions of Lot No. 10, Block A, as laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid, and said parcels are described as follows:

**Tract One:** All that certain lot or parcel of land fronting 20 feet on the East side of College Avenue and extending back with a uniform width along the Western line of Lot No. 11, owned by Manasa M. Creel, to the lands of Oscar Custafson, and being the Southwestern half of the Southern 20 feet of Lot No. 10, in Block A, in University Place.

**Tract Two:** All that certain lot or parcel of land fronting 20 feet on the Southwest side of Yoke Street, and extending back along Lot No. 11 with a uniform width for a distance of 45 feet, and being designated as the Southeastern 20 x 45 feet of Lot No. 10, in Block A, in University Place.

**Tract Three:** All that certain lot or parcel of land fronting 25 feet on the Southern side of Yoke Street, and extending back with a uniform width a distance of 45 feet, and being designated as the Northern half of the Eastern end of Lot No. 10, in Block A, in University Place.

There is excepted and reserved from Tract Three above-described, a strip or parcel

of real estate 10 feet wide and 45 feet in length as was conveyed by William J. Jones, widower, to Clarence W. McCutcheon, et ux., by Deed dated the 24th day of August, 1948, and recorded in said Clerk's Office in Deed Book No. 241, at Page No. 25, and described therein as beginning at the Northeast corner of a lot owned by McCutcheon, which corner is on the South side of Yoke, and extending thence 10 feet with the Southern side of Yoke Street; thence in a line parallel with the line of said McCutcheon 45 feet; thence parallel with Yoke Street 10 feet; thence with McCutcheon Lot 45 feet to the point and place of beginning.

**Parcel Three - Block B (Fourth Ward, Tax Map 20, Parcels 403, 404, 404.1, 405, and 406):** All of Lot Nos. 1, 2, 3, 4, and 5, Block B, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid.

**Parcel Four - Block C (Fourth Ward, Tax Map 20, Parcels 411, 412 and 413):** All of Lot Nos. 1, 2, 3, 4, and 5, Block C, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid.

**Parcel Five (Fourth Ward, Tax Map 20, Part of Parcel 397):** Being the same property that *was* conveyed to I. G. Lazzelle by Jacob Guseman and Elizabeth A. Guseman, his wife, by Deed dated the 24th day of April, 1903, and recorded in said Clerk's Office in Deed Book No. 71, at Page No. 313, and therein described as follows:

Beginning at a point in the division line of the Grantor, Jacob Guseman and the Land of the Grantee, where two (2) of the lines of the parcels of land hereby conveyed intersect two (2) of the lines of the parcel of land this day conveyed to the said Jacob Guseman by the said I. G. Lazzelle and wife, which point is 25.1 feet from the Northwestern corner of the land of the said I. G. Lazzelle, and running thence in a Northeasterly direction with said division line to said corner, a distance of 25.1 feet; thence in a Westerly direction with Stewart Street to the Northwestern corner of land hereby conveyed, a distance of 18 feet; thence in a Southerly direction, a distance of 21.3 feet to the point and place of beginning. This parcel appears to be 18 feet on Stewart Street, adjoining the Northern part of Lot No. 2, 21.5 feet and running back to the beginning 21.3 feet.

There is excepted and reserved from Lot No. 2, Block A, University Place No. 1, and Parcel No. 5 of this Deed the following described tract or parcel of real estate: Being a rectangular strip of ground parallel to and adjoining Stewart Street being known as Number 270 Stewart Street, said parcel of land having a uniform width of 3.25 feet and a length of 33 feet.

**Parcel Six:** All of that part of Sycamore and Lee Streets that were annulled by Common Council of Morgantown Ordinance adopted on November 26, 1940, and recorded in said Clerk's Office in Deed Book No. 687, at Page No. 610.

**Parcel Seven (Fifth Ward, Tax Map 20, Parcel 520):** Fife Addition, Plat recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

All of Lot No. 6, and the Western 8 feet of Lot No. 7, in Block "B", as laid down and shown on the Plan of Fife Lots as recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288; which said Lot No. 6 fronts on Falling Run Avenue for a distance of forty (40) feet, and extends back with line of Lot No 5, in said Block, on the West for a distance of 67.5 feet to a 20 foot street, and with the line of Lot No. 7, in said Block, on the East for a distance of 75.2 feet to said 20 foot street, and on which said 20 foot street said Lot fronts for a distance of 40 feet; and, said part of said Lot No. 7, fronts for a distance of 8 feet on Falling Run Avenue, and extends back with line of said Lot No. 6 for a distance of 75.2 feet on the West, and with the line of property owned by the Athens Building and Loan Association, formerly owned by M. M. Creel, on the East for a distance of approximately 80 feet to said 20 foot street.

**Parcel Eight (Fifth Ward, Tax Map 20, Parcels 521 and Part 522):** All of Lot No. 5, Block B, as the same is laid down and designated on the Official Sales Map or Plat of the Fife Addition, a copy of which said Sales Map or Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

**Cyrus K. Fife Addition (Fifth Ward):** Plat recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496.

**Parcel Nine (Fifth Ward, Tax Map 20, Parcel 527):** Part of Lot No. 7 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

Beginning at an iron pin, corner of Lot Nos. 7 and 9, in Falling Run Street, and running thence with the division line of said Lots in a Southerly direction 88 feet to an iron pin on Ray Street, another corner of Lot Nos. 7 and 9; thence with said Ray Street in a Westerly direction 39 feet to an iron pin corner to an iron pin on Falling Run Street, said pin being located 1 1/2 feet East of the corner of Lot Nos. 7 and 8; thence with Falling Run Street in an Easterly direction 36 1/2 feet to the place of beginning.

**Parcel Ten (Fifth Ward, Tax Map 20, Parcel 528):** All of Lot No. 8 and a small triangular parcel of Lot No. 7 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

Beginning at a point on Falling Run Street, corner to Lot Nos. 8 and 10 of the Official Sales Map of the Cyrus K. Fife Plan Of Lots as surveyed by J. G. Samsell, Engineer, on the 19th day of May, 1898, which Plat is recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496, and running thence in an Easterly direction along Falling Run Street, 39.5 feet to a stake, which point is 18 inches East of the corner of Lot Nos. 7 and 8 in said Plan Of Lots; thence leaving said Falling Run Street and running in a Southerly direction 83.5 feet to a stake in Ray Street, corner to said Lot Nos. 7 and 8; thence with Ray Street in a Westerly direction, 39 feet to a stake; thence in a Northerly direction, following the division line between Lot Nos. 8 and 10, as they are laid down on said Plat, 78 1/2 feet to the place of beginning; and being all of Lot No. 8 and a small triangular piece of land off of the Western side of Lot No. 7, having a frontage

on Falling Run Street of 18 inches and running back therefrom with said Lot No. 8 to a point at the original corner between Lot Nos. 7 and 8 on said Plat,

**Parcel Eleven (Fifth Ward, Tax Map 20, Parcel 531):** All of Lot No. 11 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

And being part of the same property that was conveyed to The City of Morgantown, a municipal corporation, by McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by Deed dated the 20th day of December, 2004, which is of record in said Clerk's Office in Deed Book No. 1285, at Page No. 39.

**Parcel Twelve (Fifth Ward):** Parcel No. 524: Beginning at a certain point corner to Lots No. 2 and No. 3 on Ray Street, now known as Rainy Street, thence with said Ray Street, now known as Rainy Street 50 feet to corner of Lot Nos. 1 and No. 2; thence along said Lot No 1, 86.5 feet to Falling Run Street; thence along said Falling Run Street, 50 feet to the corner of Lot No. 3; thence along said Lot No. 3, 80.7 feet to the beginning, and being the same lot or parcel known as Lot No. 2, in Block B in the "Fife Addition" to the City of Morgantown, West Virginia, as surveyed and platted by Russell L. Morris, C.E.

**Parcel Thirteen (Fifth Ward):** Parcel No. 525: Beginning at a point on the Southern property line of Falling Run Road (formerly known as Falling Run Street), corner to Lot No. 9 of the Plan Of Fife Lots; thence with the Southern property line of said Falling Run Road, N. 71° 07' E. 50.00 feet to a point, corner to Lot No, 2, in Block B, now or formerly owned by Charles E. and Wilhelmina B. Penrod, his wife, thence S. 26° 02' E. 86.50 feet to point on the Northern side of a right-of-way for a 20 foot street (formerly known as Ray Street); thence with the same, S. 64° 30' W. 50.00 feet to a point; thence N. 25° 47' 30" W. 92.26 feet to the place of beginning, being Lot No. 1, in Block B, in the Fife Addition to The City of Morgantown, as laid down and designated on a Map or Plat of the Fife Lots, prepared by Morris and Bums, Engineers, in 1903, which Plat is of record in said Clerk's Office in Deed Book No, 93, at Page No. 288.

**Parcel Fourteen (Fifth Ward):** Parcel No. 526: All of Lot No. 9, as the same is laid down and designated upon the Official Sales Map or Plat of the C. K. Fife Addition, a copy of which said Plat is duly recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496,

**Parcel Fifteen (Fifth Ward):** Parcel No. 529: Beginning at the corner of a parcel of land conveyed to J. J. Guseman by Clark B. Hall under deed dated the 21st day. of January, 1905, and recorded in said Clerk's Office in Deed Book No. 83, at Page No. 28, at a stake in the line running with Falling Run Street, N. 71° 7' E. 35 feet to the corner of Lot No. 8; thence with the Western line thereof, S. 20° 33' E. 78.65 feet to Ray Street, now known as Rainy Street; thence with the same, S. 39° 57' W. 16.25 feet to the corner of said J. J. Guseman's lot, and with the same, N. 33° 53' W. 90.03 feet to the point and place of beginning, and being a part of Lot No, 10 of the Cyrus K. Fife Plan Of Lots, a copy of which Plan is recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496.

**Parcel Sixteen (Fifth Ward):** Parcel No. 530: Beginning at a point in the Southeasterly line of Beverly Street, now called University Avenue, a corner to Lot No. 11, and running thence with said avenue, N. 36° 57' E. 17 feet and 5/8 inches to the intersection of said avenue with Falling Run Street; thence N. 71° 7' E. 38 feet and 9 inches with Falling Run Street to a stake; thence from said stake at a point in Falling Run Street; S. 33° 53' E. 90.03 feet to a point in line of Ray Street, now known as Rainy Street; thence with Ray Street, now known as Rainy Street, S. 39° 57' W. 20 feet to the corner of Lot No. 11; thence with said Lot No. 11, N. 55° 3' W. 105.06 feet to the place of beginning, and being part of Lot No. 10, in Block 8 of the Fife Addition to said City, as shown upon a Plat thereof recorded in said Clerk's Office in Deed Book No. 92, at Page No. 490.

Such lot or parcel is actually part of Lot No. 10 as laid down and designated upon the Plan of said lots laid out for Cyrus K. Fife by J. G. Samsell, Engineer, on May 19, 1898, a Map or Plat of which Plan is of record in said Clerk's Office in Deed Book No: 92, at Page No. 496.

**Parcel Seventeen (Fourth Ward):** Parcel No. 410:

**First Parcel:** All of that certain lot or parcel of land fronting thirty- five (35) feet on the West side of Yoke Street and extending back therefrom with equal and uniform width to Sycamore Street, formerly known as College Avenue, and being part of Lot No. 9, Block A, as the same is laid down and designated on the Official Sales Map or Plat of University Place, a copy of which said Map or Plat is duly recorded in said Clerk's Office in Deed Book No. 270, at Page No. 549.

**Second Parcel:** Beginning at the Northeast corner of the above described lot, which corner is on the South side of said Yoke Street, and running thence with the Southern side of Yoke Street, a distance of ten (10) feet; thence with a line parallel with the First Parcel above described, a distance of forty-five (45) feet; thence with a line parallel with the first line in this description, a distance of ten (10) feet; thence with the Eastern line of the First Parcel herein described, a distance of forty-five (45) feet to the point and place of beginning.

**Third Parcel:** That portion of annulled Sycamore Street which vested in the Grantor by that certain Ordinance of the City of Morgantown adopted on July 19, 2005 and recorded in the aforesaid County Clerk's Office in Deed Book No. 292, at Page No. 1336.

And being the same tracts or parcels of real estate that were conveyed to The City of Morgantown, a municipal corporation, by McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by Deed dated the 1st day of November, 2007, and recorded in said Clerk's Office in Deed Book No. 1357, at Page No. 216.



**Parcel Eighteen (Fourth Ward):**

Beginning at a 1/2-inch by 30-inch iron rod (set) in the Northwesterly right-of-way line of University Avenue, standing as a new corner to the Board of Governors of West Virginia University (Deed Book No. 5, Page No. 144); thence leaving said University Avenue and with new lines of said Board of Governors, N. 25° 02' 30" W. 279.13 feet to a 1/2-inch by 30-inch iron rod (set); thence N. 51° 38' 58" W. 121.13 feet to a point in the Southern right-of-way line of Campus Drive where it interests the Southern right-of-way line of said University Avenue; thence leaving said Campus Drive and with the right-of-way line of said University Avenue, a curve to the right, having a radius of 35.00 feet, Southeasterly 29.40 feet along with curve through an angle of 48° 07' 59" to a point, said curve having a chord bearing and distance of S. 79° 30' 10" E. 28.55 feet; thence S. 55° 26' 11" E. 15.35 feet to a point; thence with a curve to the left, having a radius of 180.00 feet, Southeasterly 128.67 feet along said curve through an angle of 40° 57' 29" to a point, said curve having a chord bearing and distance of S. 75° 54' 55" E. 125.95 feet; thence N. 83° 36' 18" E. 90.82 feet to a point; thence with a curve to the right, having a radius of 70.00 feet Southeasterly 115.48 feet along said curve through an angle of 94° 31' 12" to a point, said curve having a chord bearing and distance of S. 49° 08' 06" E. 102.82 feet; thence S. 01° 52' 30" E. 28.95 feet to a point; thence with a curve to the right, having a radius of 60.00 feet Southwesterly 37.84 feet along said curve through an angle of 35° 47' 28" to a point; said curve having a chord bearing and distance of S. 16° 01' 14" W. 36.87 feet; thence S. 33° 54' 57" W. 183.89 feet to a point; thence with a curve to the left, having a radius of 200.00 feet Southwesterly 11.07 feet along said curve through an angle of 03° 10' 16" to the place of beginning, said curve having a chord bearing and distance of S. 32° 19' 50" W. 11.07 feet, containing 1.00 acres, more or less, as surveyed in January, 2004, by Triad Engineering, Inc., of Morgantown, West Virginia, and shown on a Plat of Survey for The City of Morgantown, Stadium Loop Tract #1, dated January 23, 2004.

**Parcel Nineteen (Fourth Ward, Tax Map 20, Parcel 400):**

Beginning at a 1/2-inch by 30-inch iron rod (set) in the Southerly right-of-way line of Stewart Street, standing as a corner to Michael Pinion deed Book No. 782, at Page No. 297), said road bears S. 73° 08' 53" W. 49.00 feet from a 1/2-inch iron rod (found), standing as a corner to C & S Rentals, Inc. and said Pinion; thence leaving said Stewart Street and with said Pinion S. 14° 17' 13" E. 109.13 feet to a 1 / 2-inch by 30-inch iron rod (set) in the Northern right-of-way line of University Avenue; thence leaving said Pinion and with said University Avenue S. 83° 36' 18" W. 46.33 feet to a point; then with a curve to the right, having a radius of 120.00 feet Northwesterly 68.65 feet along said curve through an angle of 32° 46' 36" to a point, said curve having a chord bearing and distance of N. 80° 00' 21" W 67.72 feet; thence with a curve to the right, having a radius of 30.00 feet Northwesterly 59.89 feet along said curve through an angle of 114° 22' 59" to a point in the Southerly right-of-way line of said Stewart Street, said curve having a chord bearing and distance of N. 06° 25' 33" W. 50.43 feet; thence with said Stewart Street N. 50° 45' 57" E. 8.37 feet to a point; thence with a curve to the right, having a radius of 230.14 feet Northeasterly 96.27 feet along said

curve through an angle of 23° 58' 03" to the place of beginning, said curve having a chord bearing and distance of N. 62° 44' 58" E. 95.57 feet, containing 0.23 acres, more or less, as surveyed in January, 2004, by Triad Engineering, Inc., of Morgantown, West Virginia, and shown on a plat of survey for The City of Morgantown, Stadium Loop Tract #2, dated January 26, 2004.

And being the same tract or parcel of real estate that was conveyed to The City of Morgantown, a municipal corporation, by West Virginia University Board of Governors, On Behalf Of West Virginia University, by Deed dated the 30th day of June, 2004, and recorded in said Clerk's Office in Deed Book No. 1285, at Page No. 67.

**Parcel Twenty:**

**LOT ONE (Fifth Ward Tax Map 20 Parcel 540):**

All of Lot No. 3 of Block A of the Cyrus K Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

**LOT TWO: (Fifth Ward, Tax Map 20. Parcels 543 & 544):**

**Tract One:** All of Lot No. 6 of Block A as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

**Tract Two:** All of Lot No. 18 of Block A as the same is laid down and designated upon the Official Sales Map or Plat of the Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

**LOT THREE: (Fifth Ward, Tax No. 20, Parcel 545):**

The Western one-half of Lot No. 12, Block A. as the same is laid down and designated upon the Official Sales Map or Plat of the Fife Addition a copy of which said Sales Map or Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288, and being part of the same real estate that was conveyed to McCoy 6, a West Virginia general partnership, by the West Virginia University Foundation, Inc. by Deed dated the 18<sup>th</sup> day of February, 1992, and recorded in said Clerk's Office in Deed Book No: 1044, at Page No. 66.

And being part of the same real property conveyed to The City of Morgantown by McCoy 6 Apartments Limited Liability Company by Deed dated the 20<sup>th</sup> day of December, 2004, and recorded in said Clerk's Office in Deed Book No. 1285, at Page No. 39.

**AGREEMENT**

**by and among**

**THE CITY OF MORGANTOWN, WEST VIRGINIA AND  
MORGANTOWN BUILDING COMMISSION,  
AS TRANSFERORS**

**and**

**WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST  
VIRGINIA UNIVERSITY, A STATE INSTITUTION OF HIGHER EDUCATION,  
AS TRANSFEREE**

**Dated as of October 23, 2012**

## AGREEMENT

THIS AGREEMENT ("Agreement"), dated as of October 23, 2012, by and among THE CITY OF MORGANTOWN, WEST VIRGINIA, a municipal corporation (the "City"), and MORGANTOWN BUILDING COMMISSION, a public corporation (the "Building Commission"); the City and the Building Commission are hereinafter collectively referred to herein as "Transferors"), and WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY, A STATE INSTITUTION OF HIGHER EDUCATION ("Transferee").

### WITNESSETH:

WHEREAS, the parties hereto desire to encourage the development of improvements within that certain area of Morgantown, West Virginia, adjacent to Transferee's School of Business and Economics and including the property formerly designated as the site of "The Square at Falling Run" project, which area is more particularly depicted on the map attached hereto as Exhibit A as the "Loop Area" (herein, the "Loop Area"); and

WHEREAS, Transferors own various parcels of land located in the Loop Area, which parcels are more particularly described on Schedule 1.1 attached hereto (all of such parcels being hereinafter collectively referred to as the "Loop Parcels"); and

WHEREAS, in addition to the Loop Area, Transferors and Transferee desire to encourage the development of commercial, retail and other projects and improvements in other areas of the City, as more particularly described and set forth herein; and

WHEREAS, the parties further desire to encourage the development and expansion of the Morgantown Municipal Airport by supporting the application for governmental grants to finance such development and expansion; and

WHEREAS, in furtherance of the parties' mutual desire to encourage development within the Loop Area and such other areas, Transferors desire to transfer to Transferee, and Transferee desires to acquire from Transferors, all of the Loop Parcels, upon the terms and conditions more particularly set forth herein; and

WHEREAS, there is currently pending in the United States Bankruptcy Court for the Northern District of West Virginia (the "Bankruptcy Court") in the Chapter 7 bankruptcy case of The Square at Falling Run, LLC (Case No. 1:11-bk-00753) (the "SFR Bankruptcy Case") an adversary proceeding with respect to that certain Ground Lease ("SFR Lease") dated April 17, 2008 between the Building Commission, the City and The Square at Falling Run, LLC (the "Adversary Proceeding"); and

WHEREAS, the consummation of the transactions contemplated hereby are subject to, among other conditions, the settlement and dismissal of the Adversary Proceeding and the termination of the SFR Lease.

NOW, THEREFORE, in consideration of the premises and mutual covenants, agreements, representations and warranties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### **TRANSFER OF LOOP PARCELS AND RELATED ASSETS**

1.1 Property to be Transferred. Subject to the terms and conditions set forth in this Agreement, at the Closing (as defined in Section 3.1 hereof), Transferors agree to convey, transfer, assign and deliver to Transferee, by apt and proper special warranty deeds, assignments and other instruments of conveyance and transfer satisfactory to Transferee and its counsel, and

Transferee agrees to accept the transfer from Transferors, the following described assets, parcels or tracts of real property, and interests in real property (collectively the "Assets"):

(a) all of the Loop Parcels, together with any and all structures, parking lots and any other improvements located thereon or attached thereto; and

(b) all of Transferors' right, title and interest in and to any and all site plans, surveys, maps and environmental studies and reports (collectively, the "Maps and Reports") specifically pertaining to the Loop Parcels in Transferors' possession.

1.2 Title to Loop Parcels.

(a) Each of Transferors hereby agrees that it shall convey, transfer, assign and deliver the Loop Parcels to Transferee at Closing by apt and proper special warranty deed, free and clear of all liens, security interests, easements, claims, encumbrances and other restrictions, created by, through or under such Transferor.

(b) At Closing, each of Transferors agrees to convey, transfer, assign and deliver to Transferee all of the Maps and Reports.

**ARTICLE II**

**CONSIDERATION FOR ASSETS**

2.1 Development Initiatives; 2026 Payment. As an inducement to Transferors to transfer, assign and otherwise convey the Loop Parcels and other Assets to Transferee, and in consideration thereof, Transferee agrees as follows:

(a) At Closing, Transferee will pay to Transferors the sum of One Hundred Thousand Dollars (\$100,000) (the "Closing Payment").

(b) At Closing, Transferee will pay to Transferors the sum of \$28,925.00 for an unmapped parcel of real estate located in Block A and being part of Lots 6 and

7, of University Place, and being a parcel of real estate already owned by the Transferors prior to creation of “The Square at Falling Run Project”.

(c) After the Closing, Transferee shall undertake and diligently pursue the following development initiatives:

(i) Within five years of the Closing Date, Transferee will begin construction of a project (herein, the “Loop Project”) in the Loop Area and the area depicted on the map attached hereto as Exhibit A as the “Falling Run Road Area” (the “Falling Run Road Area”) which will be an alternative project to The Square at Falling Run project originally contemplated in the Loop Area by The Square at Falling Run, LLC. Transferee anticipates that the total construction cost of the Loop Project subject to the City’s business and occupation taxes (herein, “B&O taxes”) will exceed \$60,000,000.

(ii) Transferee will develop projects (herein, the “College Park Projects”) in that certain area of the City depicted on the map attached hereto as Exhibit A as the “College Park Area” (the “College Park Area”).

(iii) Transferee will also develop not less than 20,000 square feet of dedicated retail, commercial and/or other rental space which will be subject to City B&O taxes in one or more of the following areas: the Loop Area, the College Park Area, the Falling Run Road Area, and that certain area depicted on the map attached hereto as Exhibit A as the “Sunnyside Area” (all of such retail, commercial and/or other rental space being hereinafter referred to collectively as the “Commercial Space”).

(iv) Promptly after the Closing, Transferee will solicit one or more grants in an aggregate amount of not less than \$1,000,000 from various governmental agencies

and other third parties to support the expansion of the Morgantown Municipal Airport (collectively, the "Airport Grant Funds").

(v) Transferee will support, promote and assist the City in the development, sale or lease of a 13-acre tract to be obtained by the City from the Monongalia County Development Authority ("MCDA") located adjacent to Hartmann Run Road, and will work with and support the City to increase activity and development within the Morgantown Municipal Airport, including, but not limited to, any planned runway expansion. Transferee will also work with the City and MCDA to promote commercial and other development projects in MCDA's planned business park to be located adjacent to the Morgantown Municipal Airport. Transferee's obligation under this Section 2(b)(v) shall not extend to or otherwise require the expenditure of acquisition or construction funds.

(vi) At or as soon as practicable after the Closing, Transferee shall execute and deliver an easement to Morgantown Housing Authority ("MHA"), in a form which shall be mutually acceptable to Transferee and MHA (the "New Easement"), granting to MHA a new right of way through Transferee-controlled property located in the Fifth Ward of the City which is the subject of and more particularly described in the Old Easement (as hereinafter defined), in exchange for the reconveyance and release by the City (the "Old Easement Conveyance") of that certain right of way conveyed by Transferee to the City pursuant to that certain Deed dated June 30, 2004, of record in the office of the Clerk of the County Commission of Monongalia County in Deed Book 1285, at page 67, and more particularly described therein as Parcel 3 (said Parcel 3 being herein described as the "Old Easement").



(d) On August 31, 2026, Transferee shall pay to City (in its own capacity and on behalf of the Building Commission) the sum of \$4,200,000 (the “2026 Payment”), less the following credits:

(i) All B&O taxes paid to the City prior to August 31, 2026 for construction expenditures on the Loop Project in excess of \$30,000,000;

(ii) All B&O taxes paid to the City prior to August 31, 2026 for construction expenditures on the College Park Project;

(iii) All B&O taxes paid to the City prior to August 31, 2026 arising from and directly associated with any construction, retail, commercial, rental and other development activities located in, or with respect to the completion of, the Commercial Space; and

(iv) All Airport Grant Funds received or obtained prior to August 31, 2026 as a result of Transferee’s direct solicitation efforts, or indirectly as a result of specifically identifiable efforts, contacts or commitments made by Transferee. The City and Transferee understand and agree that there may be instances when Airport Grant Funds are obtained through the joint efforts of such parties, and in such instances City and Transferee shall upon payment of such Airport Grant Funds agree on an allocation of the amount of credit from such payment to be applied to the 2026 Payment.

2.2 Post-Closing Reports. [On or by July 10, 2013,] and on or by the tenth (10<sup>th</sup>) day of each calendar quarter thereafter (*i.e.*, April 10, July 10, October 10 and January 10), the City shall account for and notify Transferee in writing of the City’s receipt of all taxes and funds covered by and described in Sections 2.1(c)(i)-(iv) above during the immediately preceding quarter, and the City and Transferee shall annually, within 60 days following the end

of each year, reconcile the balance of such taxes and funds and credit them against the 2026 Payment. If the City and Transferee are unable to agree on the amount of such balance within such 60-day period, they shall meet at least once within the next following 30 days and cooperate with each other to resolve any differences. In furtherance of the foregoing, commencing on [July 10, 2013] and on a quarterly basis thereafter, Transferee shall submit a report to the City setting forth the contracts, including the dollar amount attributable to such contracts, entered into by Transferee with respect to any construction and other development activities relating to any of the projects contemplated by Section 2.1(i) through (iii) hereof.

2.3 **Limitation of Liability.** Notwithstanding any provision herein or in any other agreement to the contrary, Transferors hereby confirm and agree that if Transferee fails to perform any or all of the development initiatives set forth in Section 2.1(b) hereof, Transferors' sole and exclusive remedy shall be limited to receipt of the 2026 Payment, as the same may have been adjusted pursuant to the terms of Section 2.1 hereof, it being understood and agreed that upon payment of the 2026 Payment, as adjusted pursuant to the terms hereof, Transferee shall have no further obligation or liability whatsoever to Transferors hereunder.

### **ARTICLE III**

#### **CLOSING; TERMINATION OF AGREEMENT**

3.1 **Time and Place.** The consummation of the transactions contemplated herein (the "**Closing**") shall take place at the offices of Jackson Kelly PLLC, 150 Clay Street, Morgantown, West Virginia, at a time and date within 30 days after the satisfaction of all of the terms and conditions set forth in Article VII hereof, or at such other time and place as the parties may mutually agree, at which time (the "**Closing Date**") and place the following transactions shall occur:

(a) Transferors shall deliver to Transferee (in form and substance satisfactory to Transferee and its counsel) one or more special warranty deeds, bills of sale, assignments (including acceptances and acknowledgments thereof), endorsements, titles, and such other instruments of conveyance as may be reasonably requested by Transferee to transfer and convey the Assets to Transferee and to otherwise effect the consummation of the transactions contemplated by this Agreement and which are normal and customary in transactions of like kind;

(b) Transferors shall deliver to the title insurance company designated by Transferee affidavits, dated as of the Closing Date, in the form then required by such title insurance company to insure title at its regular rates in accordance with its title commitments;

(c) The City and Transferee shall execute and deliver to each other the Mutual Release and Cancellation Agreement with respect to that certain Memorandum of Understanding dated as of December 4, 2003, in the form attached hereto as Exhibit B;

(d) Transferee shall execute and deliver to MHA, if Transferee and MHA have agreed upon the form thereof, the New Easement;

(e) The City shall execute and deliver the Old Easement Conveyance to Transferee;

(f) Transferee shall have received evidence satisfactory to Transferee that the SFR Lease has been transferred to Transferee pursuant to the authority of the Bankruptcy Court in the SFR case, and that subsequent to Transferee's acquisition of the SFR Lease both Transferee and the City have terminated the SFR Lease; and

(g) Transferee shall deliver the Closing Payment to the City in its own capacity and on behalf of the Building Commission.

(h) The “Notice of Exercise of Option” recorded on October 26, 2011 by Transferee with respect to a portion of the Loop Parcels shall have been rescinded with the consent of the Transferors.

3.2 Termination of Agreement. Anything herein to the contrary notwithstanding, this Agreement may be terminated immediately and the transactions herein contemplated may be abandoned at any time:

- (i) by mutual consent of Transferors and Transferee; or
- (ii) by Transferee if Transferors shall default in the performance of any part of this Agreement, or if any of the conditions set forth in Article VI has not been satisfied prior to April 30, 2013.

3.3 Effect of Appeal. The parties agree that the pendency of an appeal of any order required as a closing condition or a condition precedent to the obligation of either party to close the transactions described herein shall not relieve either party from the obligation to close, provided all other conditions and obligations to the Closing have been satisfied and no stay of such order is in effect.

#### **ARTICLE IV**

##### **REPRESENTATIONS AND WARRANTIES OF TRANSFERORS**

Each of Transferors hereby represents and warrants to Transferee as follows:

4.1 Organization. It is a public corporation duly organized and validly existing under the laws of the State of West Virginia, and has full power and authority to enter into this Agreement and to carry out the transactions contemplated.

4.2 Transferors’ Authority Relative to this Agreement. The execution and delivery of this Agreement by each Transferor and the consummation by it of the transactions

contemplated hereby have been duly authorized by all necessary legal proceedings on the part of such Transferor, including, but not limited to, the approval of The City Council of Morgantown, West Virginia, and no other corporate or legal proceedings are necessary to authorize this Agreement and the transactions contemplated hereby or to consummate the transactions contemplated hereby on behalf of Transferors. This Agreement has been duly executed and delivered by Transferors and constitutes a valid and binding obligation of Transferors, enforceable in accordance with its terms.

4.3 Compliance with Law. Except in such matters subject to the SFR Bankruptcy Case, including the Adversary Proceeding, neither Transferor has received any written orders, notices of investigation, assessments or any other notices from any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, that such Transferor or the Loop Parcels owned by it, or any part thereof, is in violation of any law, regulation, rule, order, decree or judgment applicable to the Loop Parcels. Each of the Loop Parcels owned by such Transferor is in compliance in all material respects with all applicable laws, regulations, rules, orders, judgments and decrees of any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, having jurisdiction over any of the Loop Parcels.

4.4 Environmental. To Transferors' actual knowledge, no hazardous materials have been used, discharged or stored on or about the Loop Parcels, and no such hazardous materials are now located on or below the surface of the Loop Parcels. As used herein, "hazardous materials" shall mean asbestos, oil as defined in the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, and any "hazardous substance," "hazardous materials" or "hazardous wastes" as defined or used in the Federal Water Pollution Prevention and Control

Act, supra, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 18015101-5128, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-7000, and in the regulations adopted and publications promulgated pursuant thereto, or in any other federal, state or local environmental law, ordinance, rule or regulation.

4.5 Legal Proceedings, etc. Except in such matters subject to the SFR Bankruptcy Case, including the Adversary Proceeding, there is no legal, administrative, arbitration or other proceeding or known governmental investigation pending, or to the best of Transferors' knowledge, threatened, against or affecting the Loop Parcels or any part thereof or interest therein.

4.6 Conflicting Instruments. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not, with or without the giving of notice, or the passage of time, (a) conflict with or result in the breach of any provision of the City's charter or any ordinance creating the Building Commission or its bylaws, or (b) conflict with, violate, constitute a default under or result in the breach of any law, order, rule, regulation, writ, injunction or decree of any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, having jurisdiction over Transferors or any of the Loop Parcels.

4.7 Consents and Approvals Authorities and Other Persons. Except for (i) approval by the Bankruptcy Court, the City Council of Morgantown, West Virginia, and by the governing board of the Building Commission, and (ii) the consent of the West Virginia Economic Development Authority ("WVEDA"), no characteristic of Transferors or of the nature

of their business or operations requires any consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority or any other person in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

4.8 **Brokers.** No broker or finder has acted directly or indirectly for Transferors in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements or understandings made by or on behalf of Transferors.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF TRANSFEREE**

Transferee hereby represents and warrants to Transferors as follows:

5.1 **Corporate Organization and Authority.** Transferee is a public agency duly organized and validly existing under the laws of the State of West Virginia, authorized to determine, control, supervise and manage the financial, business and education policies and affairs of West Virginia University, and has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

5.2 **No Default or Breach of Obligations.** Neither the execution or delivery by Transferee of this Agreement and the documents to be executed and delivered by it pursuant hereto, nor the consummation of the transactions contemplated herein or therein, will conflict with, violate or result in the breach of or constitute a default under any law, regulation, order, writ, injunction, decree, determination or award of any court, governmental department, board,

agency or instrumentality, domestic or foreign, having jurisdiction over Transferee, or any arbitrator, applicable to Transferee.

5.3 Execution and Delivery. The execution and delivery of this Agreement by Transferee and the consummation by Transferee of the transactions contemplated have been duly authorized by Transferee's governing board, and no other corporate proceedings on the part of Transferee are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Transferee and constitutes a valid and binding obligation of Transferee, enforceable in accordance with its terms.

5.4 Brokers. No broker or finder has acted directly or indirectly for Transferee in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements or understandings made on behalf of Transferee.

## ARTICLE VI

### OBLIGATIONS PRIOR TO CLOSING

6.1 Conduct of Business. Each of Transferors covenants and agrees that, except as otherwise consented to by Transferee prior to the Closing, neither Transferor will engage in any one or more of the following activities:

- (i) sell, pledge, dispose of or encumber any of the Loop Parcels; or
- (ii) enter into any contracts or other commitments with respect to any of the Loop Parcels.

6.2 Access to Information. Transferors shall afford the officers, employees and agents of Transferee complete access at all reasonable times, from the date hereof to the



Closing, to its officers, employees, agents, properties, operating manuals, books and records, and shall furnish Transferee all financial information, operating manuals and other data and information relating to the Loop Parcels as Transferee, through its officers, employees or agents, may reasonably request, including, but not limited to, environmental studies, title opinions, surveys and maps.

6.3 Consents; Additional Agreements. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, including (i) using reasonable efforts to remove any legal impediment to the consummation or effectiveness of such transactions, and (ii) using reasonable efforts to obtain all necessary waivers, consents and approvals of all third parties and governmental bodies, and to effect all necessary filings with all applicable state and federal governmental agencies or authorities.

## ARTICLE VII

### CONDITIONS TO OBLIGATIONS OF TRANSFEEE

Each and every obligation of Transferee under this Agreement to be performed on or before the Closing shall be subject, unless waived by Transferee, to the satisfaction on or before the Closing Date of each of the following conditions:

7.1 Bankruptcy Court Approval of Transferee Purchase of SFR Lease and Dismissal of the Adversary Proceeding. The purchase of all right, title and interest of the Trustee in and to the SFR Lease by the Transferee from the Trustee in the SFR Bankruptcy Case pursuant to an order of the Bankruptcy Court, free and clear of all liens, claims and

encumbrances, including, without limitation, the lien of First United Bank & Trust, which order shall also provide for the settlement and dismissal without any liability to Transferor of the Adversary Proceeding and the release of the City, the Building Commission and their respective officers and employees from any and all liability with respect to the SFR Lease and the Adversary Proceeding. Notwithstanding the foregoing, it is the Transferors' position that the SFR Lease has been automatically rejected, but Transferors will cooperate with Transferee in connection with the entry of the order described in this sub-paragraph.

7.2 Termination of the SFR Lease. Following Transferee's purchase of the SFR Lease, the Transferee and the Transferors shall enter into an agreement, in the form attached hereto as Exhibit C, immediately terminating the SFR Lease without liability to any party.

7.3 Title to Assets. In the opinion of counsel for Transferee, at the Closing Transferee will be acquiring good and marketable fee simple title to the Loop Parcels, free and clear of all liens, claims, security interests, easements, encumbrances and other restrictions, except such easements, claims, encumbrances and other restrictions as are acceptable to Transferee in its sole discretion.

7.4 Title Insurance. Transferee shall have received an Owner's Title Insurance Policy insuring title to the Loop Parcels in the sum of not less than \$4,800,000, dated or updated to the Closing Date, issued by a reputable title insurance company at regular rates, satisfactory to Transferee in form and substance, containing no exceptions for matters of survey, mechanics liens, parties in possession. All premiums for such title insurance shall be borne by Transferee, and all attorney fees and similar costs for an examination and report to such insurance company shall be borne by Transferee.

7.5 Condition and Sufficiency of Assets. Since the execution of this Agreement, the Loop Parcels shall not have been adversely affected in any material way as the result of any act of God, fire, flood, war, labor disturbance or similar calamity, or by the actions of any lessee thereof or any other persons, and there shall not otherwise have been any material adverse change in the condition of the Loop Parcels since the date hereof.

7.6 Reconveyance of Old Easement. The City shall have reconveyed the Old Easement to Transferee in a form satisfactory to Transferee.

7.7 Representations and Warranties True. The representations and warranties contained in Article IV hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

7.8 Performance of Covenants. Transferors shall have performed and complied in all material respects with each and every covenant, agreement and condition required to be performed or complied with by it prior to or on the Closing Date.

7.9 No Governmental or Other Proceeding or Litigation. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated hereby, and no suit, action, investigation, inquiry or proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby or seeks to impose any liability on Transferee as a result of the transactions contemplated hereby.

7.10 Approvals and Consents. All consents and approvals of any private person, and all consents and approvals or the absence of disapprovals within applicable time periods, from public authorities, Federal, state, foreign or local (or exemptions from the

requirements therefor), the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement, shall have been obtained, including, without limitation, any required approval by WVEDA, the West Virginia University Board of Governors, the City Council of the City of Morgantown, the governing board of the Building Commission and any other public entities or public bodies, and the governing boards thereof.

7.11 No Injunctions. On the Closing Date, there shall be no effective injunction, writ or temporary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing the transactions provided for herein not be consummated as herein provided.

7.12 Environmental. Transferee shall have completed all environmental investigations of the Loop Parcels and shall have received an environmental report with respect to such Loop Parcels satisfactory to Transferee in its sole discretion.

## **ARTICLE VIII**

### **CONDITIONS TO TRANSFERORS' OBLIGATIONS**

Each and every obligation of Transferors under this Agreement to be performed on or before the Closing shall be subject, unless waived by Transferors, to the satisfaction on or before the Closing Date of the following conditions:

8.1 Bankruptcy Court Approval of Transferee Purchase of SFR Lease and Dismissal of the Adversary Proceeding. The purchase of all right, title and interest of the Trustee in and to the SFR Lease by the Transferee from the Trustee in the SFR Bankruptcy Case pursuant to an order of the Bankruptcy Court, free and clear of all liens, claims and encumbrances, including, without limitation, the lien of First United Bank & Trust, which order shall also provide for the settlement and dismissal without any liability to Transferor of the

Adversary Proceeding and the release of the City, the Building Commission and their respective officers and employees from any and all liability with respect to the SFR Lease and the Adversary Proceeding. Notwithstanding the foregoing, it is the Transferors' position that the SFR Lease has been automatically rejected, but Transferors will cooperate with Transferee in connection with the entry of the order described in this sub-paragraph

8.2 Termination of the SFR Lease. Following Transferee's purchase of the SFR Lease, the Transferee and the Transferors shall enter into an agreement, in the form attached hereto as Exhibit C, immediately terminating the SFR Lease without liability to any party.

8.3 Dismissal of Certain Litigation Against City. The Trustee of the Bankruptcy Case of McCoy 6, LLC shall have caused civil action numbers 1:10CV54 and 1:10CV55 pending in the United States District Court for the Northern District of West Virginia, and adversary proceeding numbers 10-ap-00026 and 10-ap-00025 pending in the Bankruptcy Court, against the City and the City's officers and employees relating to Mountaineer Court to be dismissed as against the City and its officers and employees with prejudice, and the Trustee in the Bankruptcy Estates of McCoy 6, LLC, The Square at Falling Run, LLC and Augusta Apartments, LLC will release the City and its officers and employees from any and all claims with respect thereto.

8.4 Representations and Warranties True. The representations and warranties contained in Article V hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

8.5 Performance of Covenants. Transferee shall have performed and complied in all material respects with each and every covenant, agreement and condition

required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

8.6 No Governmental or Other Proceeding or Litigation. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated hereby, and no suit, action, investigation, inquiry or other proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby or seeks to impose any liability on Transferors as a result of the transactions contemplated hereby.

8.7 Approvals and Consents. All consents and approvals of any private person, and all consents and approvals or the absence of disapprovals within applicable time periods, from public authorities, Federal, state, foreign or local (or exemptions from the requirements therefor), the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement, shall have been obtained, including, without limitation, any required approval by the WVEDA, the West Virginia University Board of Governors, the City Council of the City of Morgantown, the governing board of the Building Commission and any other public entities or public bodies, and the governing boards thereof.

8.8 No Injunctions. On the Closing Date, there shall be no effective injunction, writ or temporary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing the transactions provided for herein not be consummated as herein provided.

8.9 Certificates. Transferee shall have furnished Transferors with such certificates of its officers to evidence compliance with the conditions set forth in this Article VIII as may be reasonably requested by Transferors.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

9.1 Risk of Loss. Risk of loss of, or damage or destruction to, any of the Assets to be transferred to Transferee hereunder from fire or other casualty or cause, shall be borne by Transferors at all times prior to the Closing Date.

9.2 Entire Agreement. This Agreement, including the Schedules which form a part hereof, contains the entire understanding of the parties hereto in respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

9.3 Survival of Representations and Warranties. All representations, warranties, agreements, covenants and obligations made or undertaken by Transferee or Transferors in this Agreement (including the Schedules attached hereto), or in any certificate, instrument or document delivered by or on behalf of any of the parties pursuant to this Agreement, shall survive the Closing hereunder.

9.4 Amendment and Modification. This Agreement may be amended, modified and supplemented only by an instrument in writing signed by all of the parties hereto.

9.5 Assignment. This Agreement and all the provisions hereof shall be binding upon and inure to the benefits of the parties and their respective successors and

permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party.

9.6 Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by U.S. registered or certified mail, return receipt requested, postage prepaid:

If to Transferee to:

WVU Real Estate  
West Virginia University  
P. O. Box 6555  
48 Donley Street, Marina Tower  
Morgantown, West Virginia 26506-6555

With a copy to:

Vice President for Legal Affairs and General Counsel  
West Virginia University  
P. O. Box 6204  
Morgantown, West Virginia 26506

With a copy to:

Charles W. Loeb, Jr.  
Jackson Kelly PLLC  
P. O. Box 553  
Charleston, West Virginia 25322

If to Transferors:

City of Morgantown, West Virginia  
c/o City Manager  
389 Spruce Street  
Morgantown, West Virginia 26505

and



Morgantown Building Commission  
c/o City Manager  
389 Spruce Street  
Morgantown, West Virginia 26505

or to such other address as a party shall hereafter specify by notice in writing to the other.

9.7 Non-waiver. No waiver or omission by either party to require performance by the other party of any of the terms and conditions of this Agreement, and no forbearance or indulgence granted or shown by either party, shall be effective unless contained in a written instrument signed by the waiving party, nor shall it release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all provisions or obligations of this Agreement on the latter's part to be performed unless it is so stated in said writing.

9.8 Expenses. Regardless of whether the Closing occurs, each party shall bear its own expenses in connection with this Agreement and the transactions herein contemplated, except to the extent resulting from a misrepresentation by either party or the breach by either party in performing their respective obligations herein, and except as otherwise expressly provided herein.

9.9 No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person other than the undersigned parties any rights or remedies under or by reason of this Agreement.

9.10 Further Assurances.

(a) Transferors hereby agrees, upon the request of Transferee and without additional consideration, to take any and all steps reasonably necessary to place Transferee in possession and operating control of the Assets, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further

acts, deeds, assignments, transfers, conveyances or assurances as may be reasonably required in order fully to transfer, assign, convey, grant, assure and confirm to Transferee all of the Assets, or to vest in Transferee such title to the Assets, as provided herein.

(b) In the event the Transferee, as a result of its title searches or surveys, determines that real estate originally intended to be covered by the SFR Lease, as outlined in red on the map attached hereto as Exhibit D, is (i) owned by one or both Transferors, (ii) not listed on Schedule 1.1, and (iii) not purchased with funds from the Grant for The Square at Falling Run, the Transferors will, upon request, prior to or subsequent to the Closing, by the Transferee, promptly sell such parcel to the Transferee for the price of \$25.252 per square foot of such real estate. For purposes of this subsection, the outline of the SFR Lease is deemed to abut the official boundaries of University Avenue, Falling Run Road (as recently revised), Yoke Street, Stewart Street and Campus Drive.

9.11 Severability of Provisions. If any provision of this Agreement, or the application thereof, to any person or circumstance shall, to any extent, be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held to be invalid or enforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.

9.12 Headings. The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

9.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.


9.14 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of West Virginia (without reference to any conflicts of laws principles thereof).

**[Signature Page Follows]**

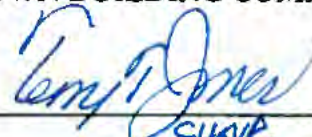
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

TRANSFERORS:

CITY OF MORGANTOWN, WEST VIRGINIA

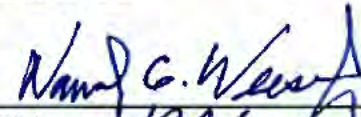
By:   
Title: City Manager

MORGANTOWN BUILDING COMMISSION

By:   
Title: CLERK

TRANSFeree:

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY, a State Institution of Higher Education

By:   
Title: VP Admin. and Finance

**SCHEDULE 1.1**

**LIST OF PROPERTIES TO BE PURCHASED FROM THE CITY OF MORGANTOWN OR CITY OF MORGANTOWN BUILDING COMMISSION**

<b>Map No.</b>	<b>Parcel No.</b>	<b>Description</b>	<b>Title to Property in Name of:</b>	<b>Total Taxes Due</b>
20	394	BL A, N PT Lot 5,6 Univ Pl #1	City of Morgantown Bldg. Comm.	Tax Exempt
20	395	BL A, N PT LOT 4 UNIV PL #1	City of Morgantown Bldg. Comm.	Tax Exempt
20	396	BL A PT LOT 3 276 STEWART	City of Morgantown Bldg. Comm.	Tax Exempt
20	397	BL A PT LOTS 1,2 270 STEW	City of Morgantown Bldg. Comm.	Tax Exempt
20	400	.23 AC BEAUTY TERRACE ADD	City of Morgantown Bldg. Comm.	Tax Exempt
		STEWART & UNIV		
20	402.2	1 AC BETWEEN UNIV AVE &	City of Morgantown Bldg. Comm.	Tax Exempt
		CAMPUS DRIVE		
20	403	BL B LOT 4 1900 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	404	BL B PT LOT 3 1906 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	404.1	BL B PT LOT 3 285 FALLING R	City of Morgantown Bldg. Comm.	Tax Exempt
20	405	BL B LOT 2 1908 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	406	BL B, LOT 1 1912 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	407	BL A, PT LOTS 2 THRU 8	City of Morgantown Bldg. Comm.	Tax Exempt
20	408	BL A, PT LOT 7 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	409	BL A, N PT LOT 8 42 YOKE ST	City of Morgantown Bldg. Comm.	Tax Exempt
20	410	BL A PT LOT 9 & PARCEL	City of Morgantown Bldg. Comm.	Tax Exempt
		46 YOKE STREET		
20	411	BL C, LOT 1 UNIVERSITY PL	City of Morgantown Bldg. Comm.	Tax Exempt
20	412	BL C LOTS 2,3 & STRIP	City of Morgantown Bldg. Comm.	Tax Exempt
		295 FALLING RUN ROAD		
20	413	BL C LOTS 4,5 & STRIP	City of Morgantown Bldg. Comm.	Tax Exempt
		291 FALLING RUN ROAD		
20	414	BL A PT LOT 9,10 54 YOKE ST	City of Morgantown Bldg. Comm.	Tax Exempt
20	416	BL A LOT 11 60 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	417	BL A LOT 12 64 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	419	BL A LOT 13 68 YOKE STREET	City of Morgantown Bldg. Comm.	Tax Exempt
20	520	BL B, LOT PT 7, ALL 6	City of Morgantown Bldg. Comm.	Tax Exempt
20	521	BL B, LOT 5 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	524	BL B, LOT 2 298 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	525	BL B, LOT 1 294 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	526	BL B, LOT 9 290 FALLING RUN	City of Morgantown Bldg. Comm.	Tax Exempt
20	527	BL B, PT LOT 7 286 FALLING	City of Morgantown Bldg. Comm.	Tax Exempt
20	528	BL B, LOT 8, PT 7	City of Morgantown Bldg. Comm.	Tax Exempt
		282 FALLING RUN		
20	529	BL B, PT LOT 10	City of Morgantown Bldg. Comm.	Tax Exempt
		278 FALLING RUN		
20	530	BL B, PT LOT 10 1890 UNIV A	City of Morgantown Bldg. Comm.	Tax Exempt
20	531	BL B, LOT 11 1880 UNIV AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	540	BL A, LOT 3 723 COLLEGE AVE	City of Morgantown Bldg. Comm.	Tax Exempt
20	543	BL A, LOT 6, PT 18	City of Morgantown Bldg. Comm.	Tax Exempt
		729 COLLEGE AVE		

**SCHEDULE 1.1**

20	544	BL A PT LOT 18	City of Morgantown Bldg. Comm.	Tax Exempt
20	54S.1	BL A PT LOT 12	City of Morgantown Bldg. Comm.	Tax Exempt
20	655	PARTS OF ANNULLED RAINY ST	City of Morgantown	Tax Exempt
20	660	PARTS OF ANNULLED LEE ST	City of Morgantown	Tax Exempt
20	661	PARTS OF ANNULLED	City of Morgantown	Tax Exempt
		SYCAMORE ST		
20	662	PARTS OF ANNULLED	City of Morgantown	Tax Exempt
		SYCAMORE ST		
20	unmapped	BL A Pt Lots 6 & 7, Univ Pl	City of Morgantown	Tax Exempt

## **EXHIBIT A LEGEND**

**“Loop Area” – those areas depicted as hatched in blue upon the Official Tax Maps attached hereto as follows:**

- A. Morgantown Corporation, District 1, Map No. 20; and**
- B. Morgantown Corporation, District 1, Map No. 26.**

**“Falling Run Road Area” – those areas depicted as hatched in red upon those certain Official Tax Maps attached hereto, as follows:**

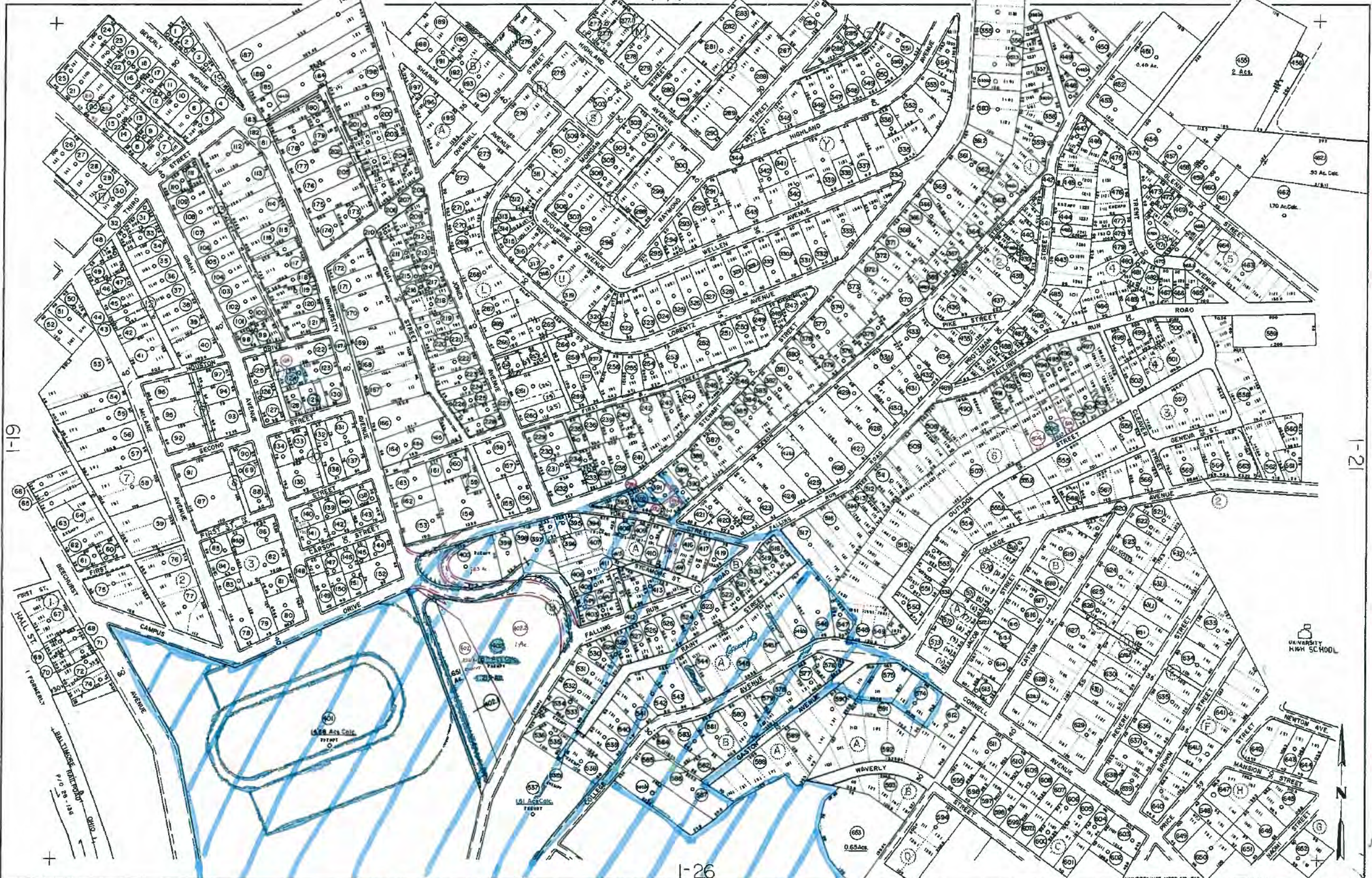
- A. Morgantown Corporation, District 1, Map No. 20;**
- B. Morgantown Corporation, District 1, Map No. 21; and**
- C. Morgan District, District 12, Map No. 8B.**

**“College Park Area” – the area depicted and outlined in black upon the plat of survey for West Virginia University Board of Governors dated April 28, 2010, prepared by Alpha Associates, Incorporated attached hereto.**

**“Sunnyside Area” – those areas depicted upon the Official Zoning Map to the City of Morgantown as Central Sunnyside Overlay and South Sunnyside Overlay, all as more particularly depicted as hatched in yellow upon those certain Official Tax Maps attached hereto, as follows:**

- A. Morgantown Corporation, District 1, Map No. 20;**
- B. Morgantown Corporation, District 1, Map No. 19;**
- C. Morgantown Corporation, District 1, Map No. 14; and**
- D. Morgantown Corporation, District 1, Map No. 15.**





For Tax Purposes Only

Prepared by  
American Air Surveys, Inc.  
Pittsburgh, Pa.

**Legend**

Property line	Original lot line	15
Edge of pavement or highway	Dist lot number in roman	20
Corporation line	Partial or irregular number	25
District line	Improvement	30
County line	Relief	35
Stream	Circle Number	40

**Revisions**

6-9-61	6-1-68 J.E.R.
2-15-62	11-15-2001 J.E.R.
4-15-75	D.G.
5-15-75	R.L.B.
7-1-84	

# COUNTY of MONONGALIA

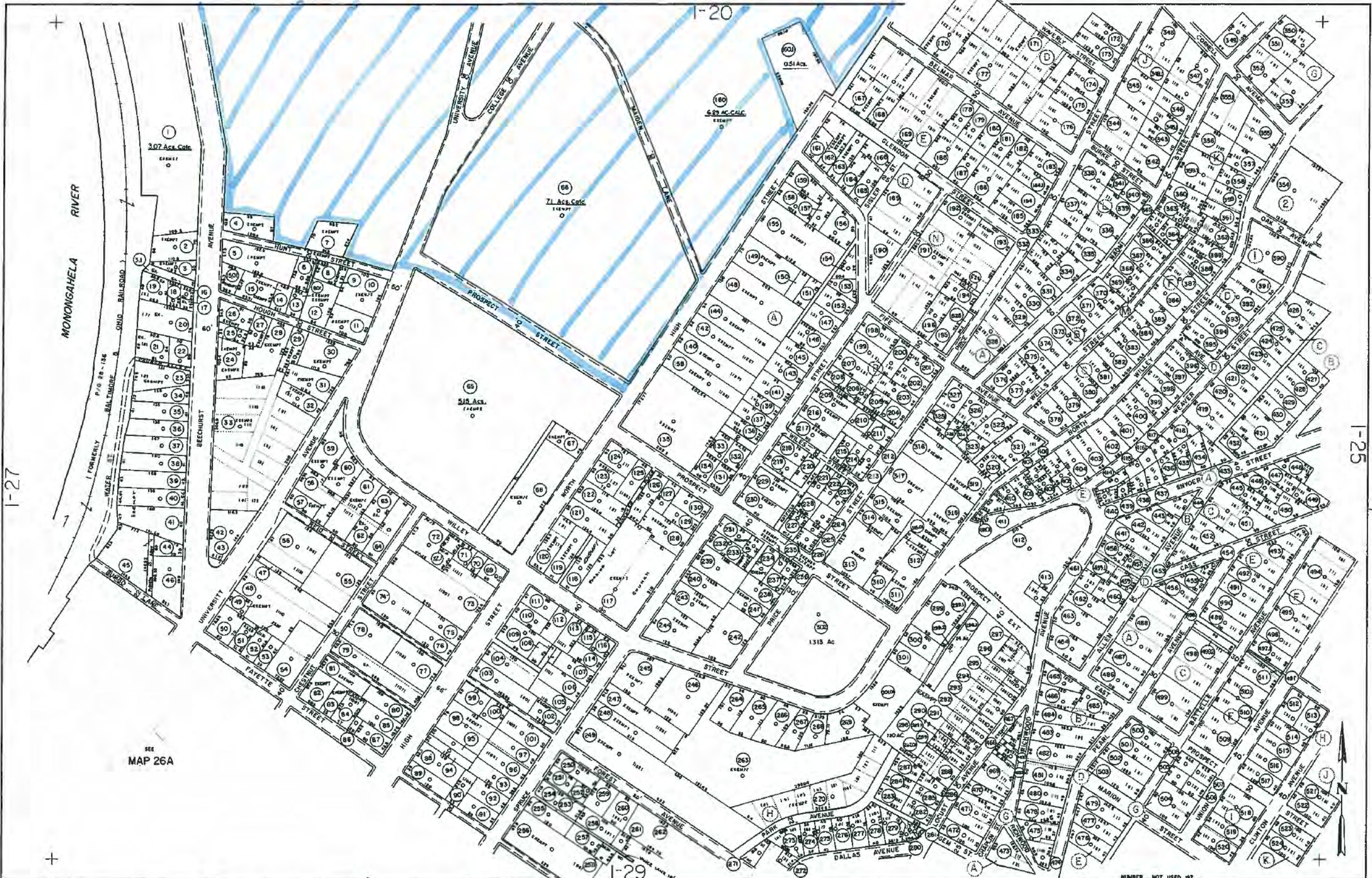
Office of Assessor

MORGANTOWN CORPORATION

District 1 Map No. 20

Date, Aerial Photography: 1960 Date, Map: March 30, 1961





SEE MAP 26A

For Tax Purposes Only

Prepared by  
American Air Surveys, Inc.  
Pittsburgh, Pa.

Legend	
Property line	Original lot line
Edge of pavement or roadway	Dead lot number in corner
Corporation line	Parcel or lot number in book
District line	Improvement
County line	Railroad
Stream	District Number

Revisions	
1 8-9-61	7 6-1-98 J.E.B.
2 2-15-62	8 11-15-2001 J.E.B.
3 AUG 15, 1973	9
4 9-14-75	10
5 7/1/84	11
6	12
7	13

### COUNTY of MONONGALIA

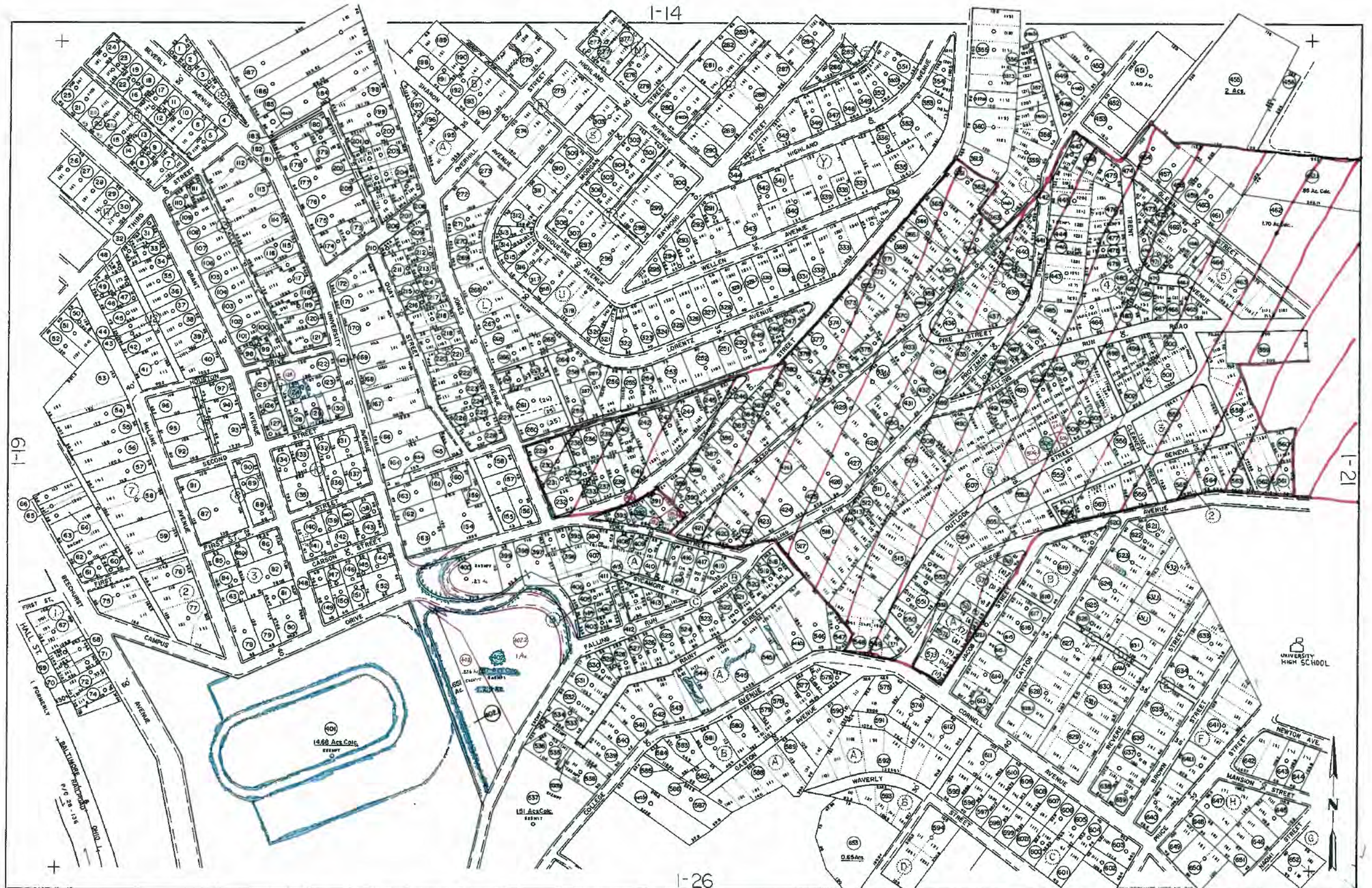
Office of Assessor

MORGANTOWN CORPORATION

District 1 Map No. 26

Date, Aerial Photography: 1960 Date, Map: March 30, 1961





For Tax Purposes Only

Prepared by  
American Air Surveys, Inc.  
Pittsburgh, Pa.

**Legend**

Property line	-----	Original tax map	-----
Edge of parcel or roadway	-----	Deed lot numbers or roadbed	-----
Carriageway line	-----	Partial or hidden area - note	-----
District line	-----	Subdivision	-----
Cowley line	-----	Waterway	-----
Stream	-----	District number	-----

**Revisions**

1. 6-8-61	1. 6-1-58 J.E.B.
2. 2-15-62	11-19-2001 J.E.B.
3. 1-15-1973	
4. 9-15-75	
5. 7/1/84	

# COUNTY of MONONGALIA

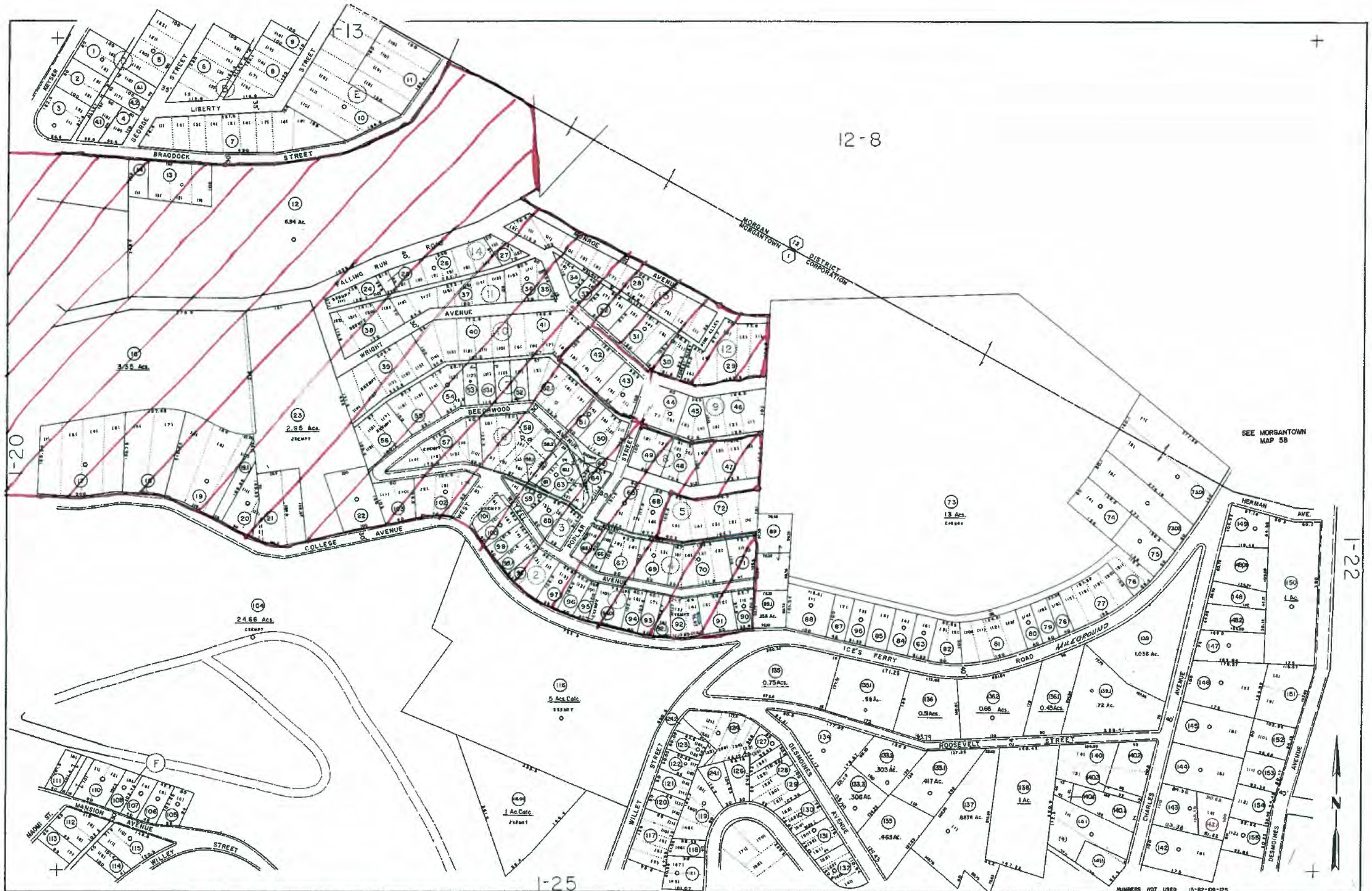
Office of Assessor

MORGANTOWN CORPORATION

District 1 Map No. 20

Date, Aerial Photography: 1960 Date, Map: March 30, 1961





For Tax Purposes Only

Prepared by  
American Air Surveys, Inc.  
Pittsburgh, Pa.

Legend

Boundary line	Original lot line	Dead lot number	Partial lot number
Edge of pavement or roadway	Corporate line	Division line	Canopy line
Division line	Canopy line	Street	

Revisions

1	6-9-81		
2	2-5-82		
3	ALD 15, 1973	DNE	
4	3/18/74	DERV	
5	7/1/84	RLB	
6	7/1/88		

COUNTY of MONONGALIA

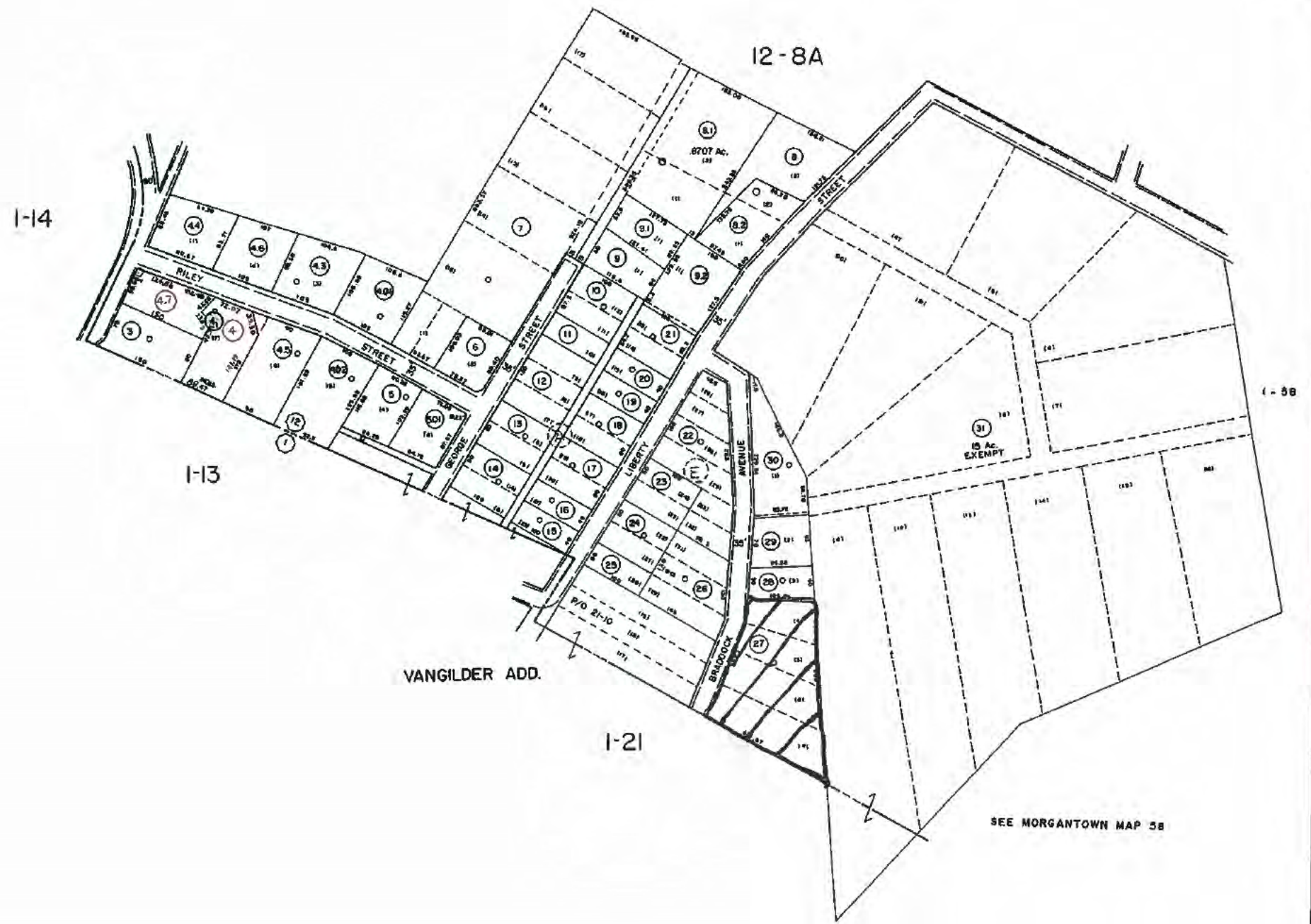
Office of Assessor

MORGANTOWN CORPORATION

District 1 Map No. 21

Date, Aerial Photography: 1960 Date, Map: March 30, 1961





104 (A1) 32	204 37	303 42	403 49
103 (A2) 33	203 38	302 43	402 48
102 (A3) 34	202 39	301 44	401 47
101 (A4) 35	207 40	300 45	400 46
100 (A5) 36	200 41		

FROM MAP 8A

**CEDARSTONE TOWNHOMES**

SCALE - 1" = 90'

**For Tax Purposes Only**

Prepared by  
**STATE TAX DEPARTMENT**  
**STATE TAX COMMISSIONER**  
**CHARLESTON, WV.**

**LEGEND**

Property line	-----	Original lot line	-----
Edge of pavement or roadway	-----	Dead lot number	(13)
Centerline	-----	Parcel or index number	(14)
District line	-----	Improvement	(15)
County line	-----	Railroad	(16)
State line	-----	Scrub dimension	(17)
Town line	-----	Dead dimension	(18)
Land mark	-----	Calculated area	(19)
Water	-----		

**REVISIONS**

10-1-88	PR 2-9-88	O.E.F.
CGIS	5/1/88	SAJ
10-1-88	J.E.B.	

**RESTRICTION**

All tax maps created under the provisions of reappraisal legislation are the property of the State of West Virginia and the reproduction, copying, distribution or sale of such tax maps or any copies thereof without the written permission of the State Tax Commissioner is prohibited by law.

**KEY MAP**

**COUNTY OF MONONGALIA**

Office of Assessor

MORGANTOWN, W. VA.

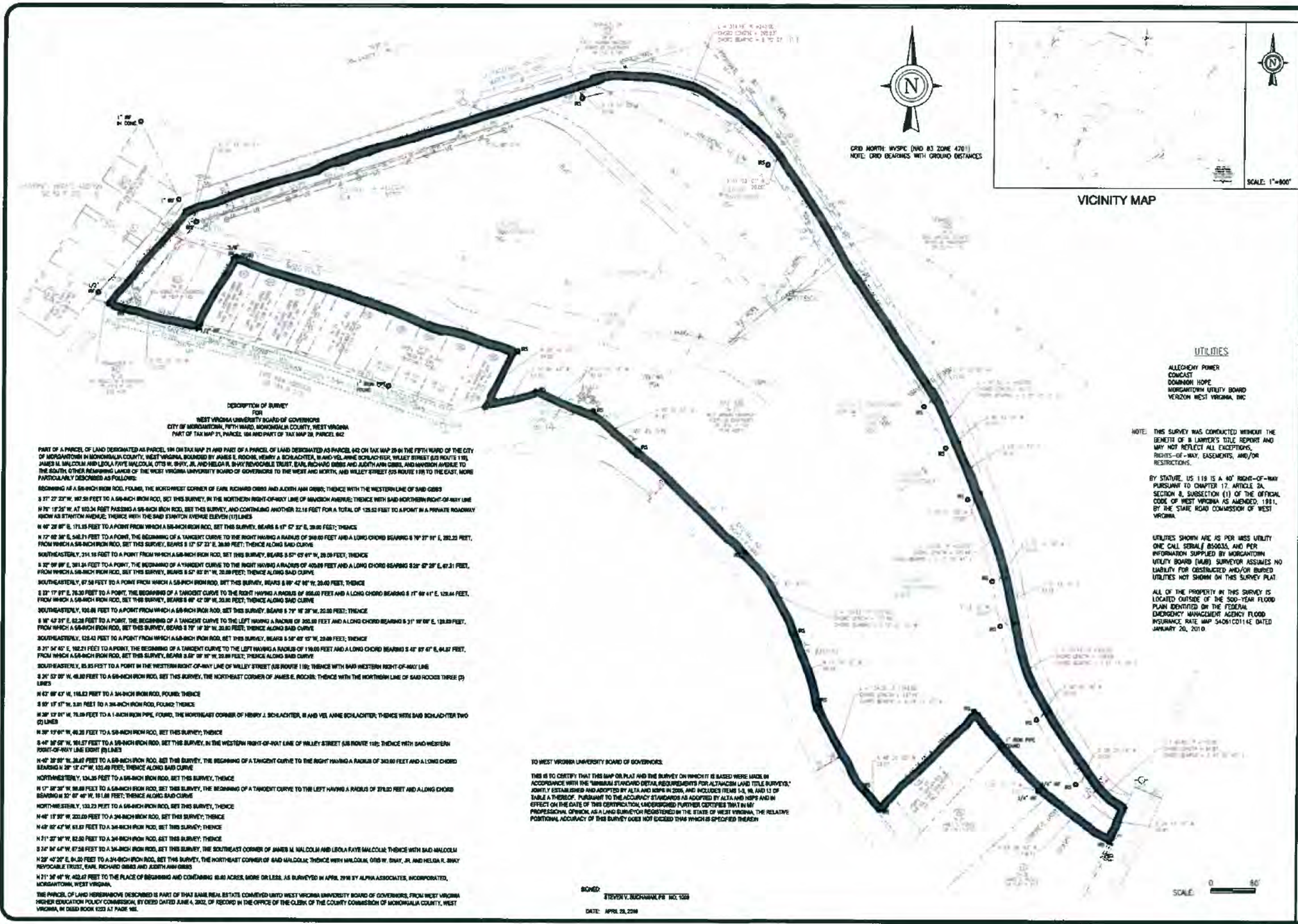
MORGAN DISTRICT

District 12 Map No. 8B

Date, Aerial Photography  
 Photo No:

Date, Map 1987  
 Scale: 1" = 100'





PLAT OF SURVEY FOR WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS

CITY: MORGANTOWN  
 WARD: 5TH WARD  
 COUNTY: MONONGALIA  
 STATE: WEST VIRGINIA

**DRAWING KEY**

- (1) LOT NUMBER
- TAX PARCEL NUMBER
- TM TAX MAP
- IRF IRON ROD FOUND SIZE AS INDICATED
- IRS 1/2"x30" IRON ROD WITH ORANGE CAP STAMPED "ALPHA ASSOC PROP CORNER" SET THIS SURVEY
- POINT
- UTILITY POLE
- SANITARY MANHOLE
- STORM WATER MANHOLE
- FIRE HYDRANT
- GAS VALVE
- WATER VALVE
- WATER METER
- WATER LINE
- STORM WATER LINE
- SANITARY SEWER LINE
- UNDERGROUND ELECTRIC LINE
- FENCE LINE
- EDGE OF PAVEMENT
- BUILDING OUTLINE

**DESCRIPTION OF SURVEY FOR WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS CITY OF MORGANTOWN, FIFTH WARD, MONONGALIA COUNTY, WEST VIRGINIA PART OF TAX MAP 21, PARCELS 15A AND PART OF TAX MAP 28, PARCEL 802**

PART OF A PARCEL OF LAND DESIGNATED AS PARCEL 15A ON TAX MAP 21 AND PART OF A PARCEL OF LAND DESIGNATED AS PARCEL 802 ON TAX MAP 28 IN THE FIFTH WARD OF THE CITY OF MORGANTOWN IN MONONGALIA COUNTY, WEST VIRGINIA, BOUNDED BY JAMES E. ROOPE, HENRY A. SCHLACHTER, II AND VEL ANNE SCHLACHTER, VALLEY STREET (US ROUTE 119), JAMES M. MALCOLM AND LEOA FAYE MALCOLM, OTIS W. BWAY, JR. AND HELGA R. BWAY REVOCABLE TRUST, EARL RICHARD OBBS AND JUDITH ANN OBBS, AND HANVON AVENUE TO THE SOUTH OTHER BOUNDING LINES OF THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS TO THE WEST AND NORTH, AND VALLEY STREET (US ROUTE 119) TO THE EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 58-INCH IRON ROD, FOUND, THE NORTHWEST CORNER OF EARL RICHARD OBBS AND JUDITH ANN OBBS; THENCE WITH THE WESTERN LINE OF SAID OBBS S 17° 22' 22" W, 107.59 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY, IN THE NORTHERN RIGHT-OF-WAY LINE OF HANVON AVENUE; THENCE WITH SAID NORTHERN RIGHT-OF-WAY LINE N 7° 12' 25" W, AT 103.24 FEET PASSING A 58-INCH IRON ROD, SET THIS SURVEY, AND CONTINUING ANOTHER 32.18 FEET FOR A TOTAL OF 135.42 FEET TO A POINT IN A PRIVATE ROADWAY KNOWN AS STANTON AVENUE; THENCE WITH THE SAID STANTON AVENUE (17) LINES

N 4° 22' 07" E, 171.15 FEET TO A POINT FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 17° 57' 32" E, 20.00 FEET; THENCE

N 72° 02' 30" E, 54.17 FEET TO A POINT, THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 249.00 FEET AND A LONG CHORD BEARING S 7° 27' 11" E, 202.25 FEET, FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 17° 57' 32" E, 20.00 FEET; THENCE ALONG SAID CURVE

SOUTHEASTERLY, 214.15 FEET TO A POINT FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 57° 05' 01" W, 29.29 FEET; THENCE

S 2° 09' 09" E, 381.24 FEET TO A POINT, THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 420.00 FEET AND A LONG CHORD BEARING S 22° 47' 20" E, 67.21 FEET, FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 57° 05' 01" W, 29.29 FEET; THENCE ALONG SAID CURVE

SOUTHEASTERLY, 67.54 FEET TO A POINT FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 8° 42' 00" W, 20.00 FEET; THENCE

S 21° 17' 07" E, 76.30 FEET TO A POINT, THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 856.00 FEET AND A LONG CHORD BEARING S 17° 01' E, 128.44 FEET, FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 8° 42' 00" W, 20.00 FEET; THENCE ALONG SAID CURVE

SOUTHEASTERLY, 104.88 FEET TO A POINT FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 7° 18' 20" W, 20.00 FEET; THENCE

S 4° 42' 37" E, 62.28 FEET TO A POINT, THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 305.00 FEET AND A LONG CHORD BEARING S 31° 01' 09" E, 128.00 FEET, FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 7° 18' 20" W, 20.00 FEET; THENCE ALONG SAID CURVE

SOUTHEASTERLY, 123.43 FEET TO A POINT FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 5° 05' 45" W, 20.00 FEET; THENCE

S 21° 54' 07" E, 182.21 FEET TO A POINT, THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1160.00 FEET AND A LONG CHORD BEARING S 47° 47' E, 64.87 FEET, FROM WHICH A 58-INCH IRON ROD, SET THIS SURVEY, BEARS S 5° 05' 45" W, 20.00 FEET; THENCE ALONG SAID CURVE

SOUTHEASTERLY, 85.95 FEET TO A POINT IN THE WESTERN RIGHT-OF-WAY LINE OF VALLEY STREET (US ROUTE 119); THENCE WITH SAID WESTERN RIGHT-OF-WAY LINE

S 21° 57' 07" W, 48.80 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY, THE NORTHEAST CORNER OF JAMES E. ROOPE; THENCE WITH THE NORTHERN LINE OF SAID ROOPE THREE (3) LINES

N 67° 07' 47" W, 164.82 FEET TO A 34-INCH IRON ROD, FOUND; THENCE

S 8° 17' 47" W, 5.81 FEET TO A 34-INCH IRON ROD, FOUND; THENCE

N 30° 12' 01" W, 76.88 FEET TO A 1-INCH IRON PIPE, FOUND, THE NORTHEAST CORNER OF HENRY A. SCHLACHTER, II AND VEL ANNE SCHLACHTER; THENCE WITH SAID SCHLACHTER TWO (2) LINES

N 30° 12' 01" W, 48.28 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY; THENCE

S 4° 38' 30" W, 161.27 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY, IN THE WESTERN RIGHT-OF-WAY LINE OF VALLEY STREET (US ROUTE 119); THENCE WITH SAID WESTERN RIGHT-OF-WAY LINE EAST (9) LINES

N 4° 38' 30" W, 26.87 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY, THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 243.00 FEET AND A LONG CHORD BEARING N 2° 12' 07" W, 132.49 FEET; THENCE ALONG SAID CURVE

NORTHEASTERLY, 124.26 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY; THENCE

N 17° 38' 30" W, 98.88 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY, THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 210.00 FEET AND A LONG CHORD BEARING N 2° 07' 49" W, 191.88 FEET; THENCE ALONG SAID CURVE

NORTHEASTERLY, 133.23 FEET TO A 58-INCH IRON ROD, SET THIS SURVEY; THENCE

N 4° 17' 30" W, 203.09 FEET TO A 34-INCH IRON ROD, SET THIS SURVEY; THENCE

N 4° 02' 47" W, 63.87 FEET TO A 34-INCH IRON ROD, SET THIS SURVEY; THENCE

N 71° 27' 30" W, 82.50 FEET TO A 34-INCH IRON ROD, SET THIS SURVEY; THENCE

S 24° 04' 42" W, 87.58 FEET TO A 34-INCH IRON ROD, SET THIS SURVEY, THE SOUTHEAST CORNER OF JAMES M. MALCOLM AND LEOA FAYE MALCOLM; THENCE WITH SAID MALCOLM

N 28° 42' 20" E, 84.00 FEET TO A 34-INCH IRON ROD, SET THIS SURVEY, THE NORTHEAST CORNER OF SAID MALCOLM; THENCE WITH MALCOLM, OTIS W. BWAY, JR. AND HELGA R. BWAY REVOCABLE TRUST, EARL RICHARD OBBS AND JUDITH ANN OBBS

N 71° 38' 40" W, 482.47 FEET TO THE PLACE OF BEGINNING AND CONTAINING 80.00 ACRES, MORE OR LESS, AS SURVEYED IN APRIL, 1916 BY ALPHA ASSOCIATES, INCORPORATED, MORGANTOWN, WEST VIRGINIA.

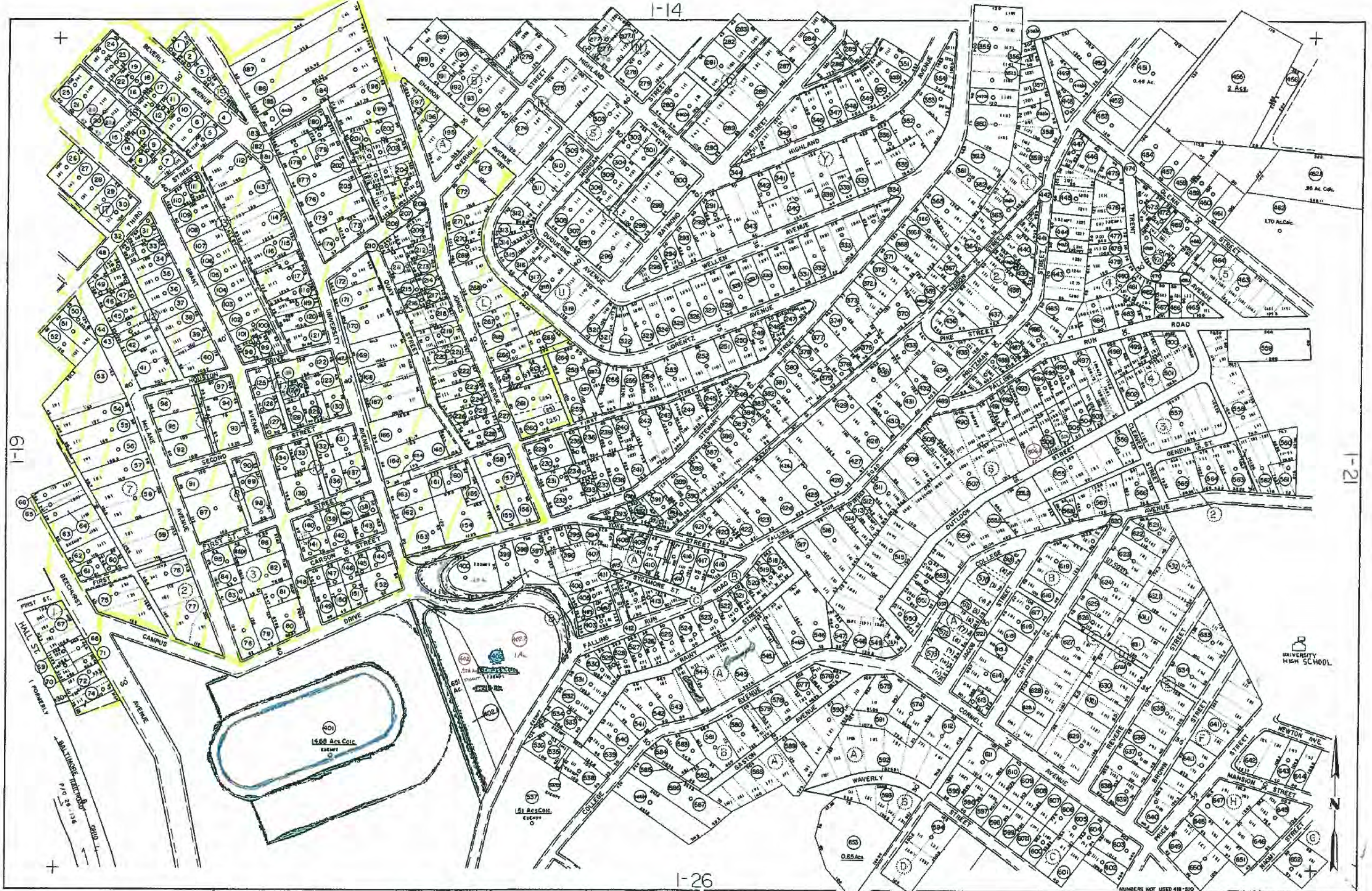
TO WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND ASCM IN 2005, AND INCLUDES ITEMS 1.3, 1.6, AND 1.7 OF TABLE A THEREOF. PURSUANT TO THE ACCURACY STANDARDS AS ADOPTED BY ALTA AND ASCM AND IN EFFECT ON THE DATE OF THIS CERTIFICATION, UNDERSIGNED FURTHER CERTIFIES THAT IN MY PROFESSIONAL OPINION, AS A LAND SURVEYOR REGISTERED IN THE STATE OF WEST VIRGINIA, THE RELATIVE POSITIONAL ACCURACY OF THIS SURVEY DOES NOT EXCEED THAT WHICH IS SPECIFIED THEREIN.

DRAWN BY: STEVEN J. BUCHANAN, P.E. NO. 1228  
 DATE: APRIL 28, 2016

SCALE: 1" = 400'





For Tax Purposes Only

Prepared by  
American Air Surveys, Inc.  
Pittsburgh, Pa.

Legend	
Proposed line	Original lot line
Edge of pavement or roadway	Block lot number - 1/2 section
Competition line	Parcel or index number - 1/4 sec.
District line	Lot number
Cherry line	Ballot
Stream	District Number

Revisions	
1	6-9-61
2	2-15-62
3	AUG 15, 1973
4	9-13-75
5	7/1/84
6	
7	
8	

### COUNTY of MONONGALIA

Office of Assessor

MORGANTOWN CORPORATION

District 1 Map No. 20

Date, Aerial Photography: 1960 Date, Map, March 30, 1961





For Tax Purposes Only  
 Prepared by  
 American Air Surveys, Inc.  
 Pittsburgh, Pa.

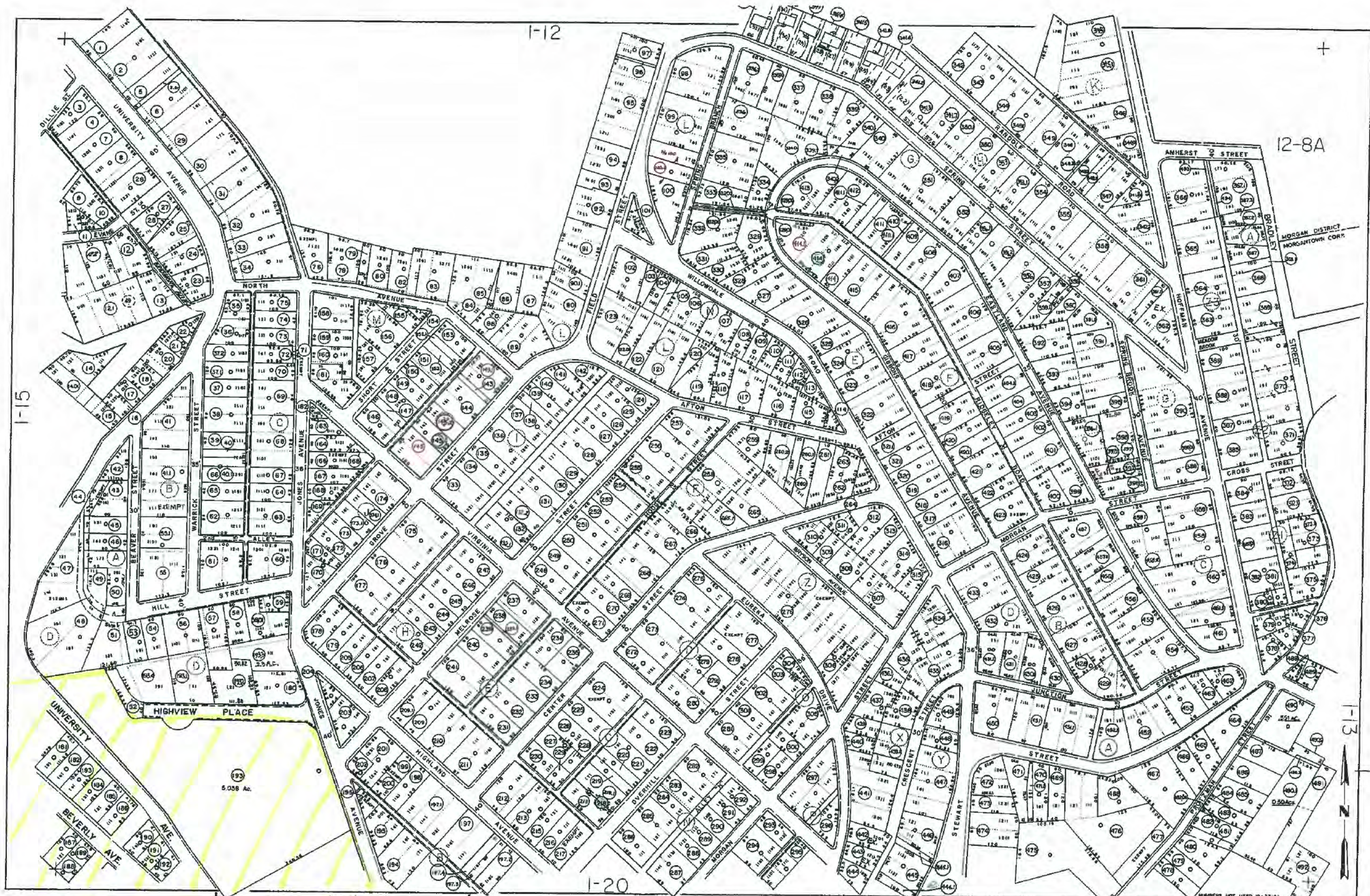
Legend	
Property line	Original lot line
Edge of pavement or roadway	Dead lot number
Carpetation line	Parcel or Index number in job
District line	Improvement
County line	Railroad
Stream	District Number
DMED DIMENSION	Sealed dimension

Revisions	
1	8-9-81
2	2-10-82 CORRECTED
3	AUG 15, 1973
4	6-12-79
5	7-1-82
6	7-1-83
7	7-1-83

COUNTY of MONONGALIA  
 Office of Assessor

MORGANTOWN CORPORATION  
 District 1 Map No. 19  
 Date, Aerial Photography: 1960 Date, Map: March 30, 1961





For Tax Purposes Only

Prepared by  
American Air Surveys, Inc.  
Pittsburgh, Pa.

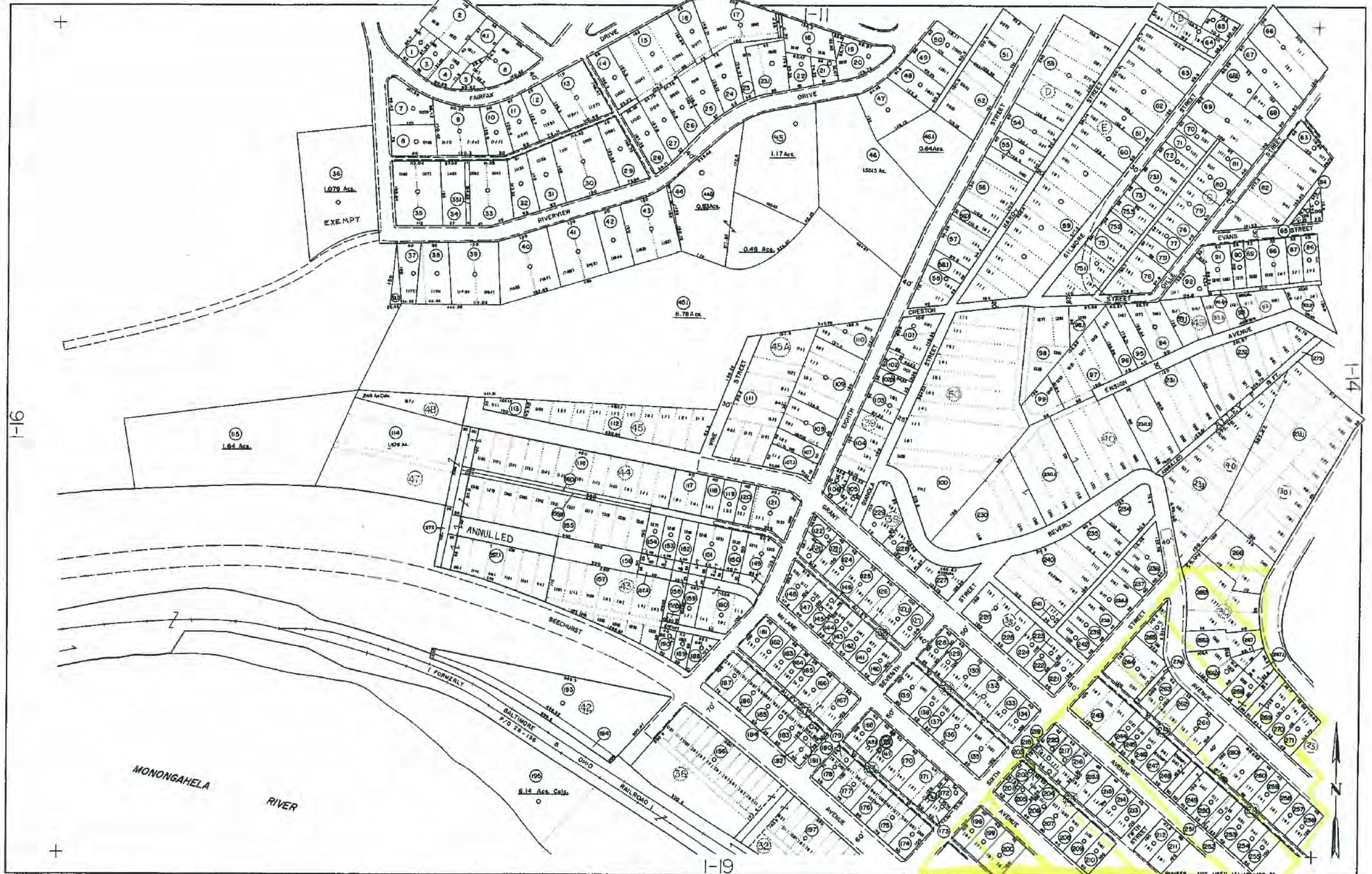
Legend	
Property line	Orange line
Edge of pavement or roadway	Black line number
Centerline line	Black or red number
District line	Shaded
County line	Shaded
Feature	Shaded

Revisions	
1 2-3-81	6-1-88 J.E.B.
1 2-13-81	
1 AUG 15, 1977	OAE
1 9-17-75	
1 7/1/84	

COUNTY of MONONGALIA  
Office of Assessor

MORGANTOWN CORPORATION  
District 1 Map No. 14  
Date, Aerial Photography: 1960 Date, Map: March 30, 1961





For Tax Purposes Only

Prepared by  
American Air Surveys, Inc.  
Pittsburgh, Pa.

Legend

Property line	Original lot line	36
Edge of driveway or roadway	Dead lot number	37
Cooperation line	Parcel or lot area double name	38
Division line	Improvement	39
Center line	Footprint	40
Stream	Division Name	41

Revisions

1	6-8-81	1	11-13-2001 J.E.B.
2	2-15-82	2	
3	AUG 15, 1923	3	
4	Revised to 21-82	4	
5	7/11/84	5	
6	Revised to 10-1-88	6	
7	OGIS 1-93	7	

COUNTY OF MONONGALIA

Office of Assessor

MORGANTOWN CORPORATION

District 1 Map No. 15

Date, Aerial Photography: 1960 Date, Map: March 30, 1961



**EXHIBIT B**

**MUTUAL RELEASE AND CANCELLATION AGREEMENT**

This Mutual Release and Cancellation Agreement dated this \_\_\_ day of \_\_\_\_\_, 2012 by and among The City of Morgantown Building Commission, a West Virginia public corporation, (“Commission”), The City of Morgantown, a municipal corporation, (“City”) and The Board of Governors of West Virginia University for and on behalf of West Virginia University, an agency of the State of West Virginia, (“WVU”).

WHEREAS, City and WVU entered into a Memorandum of Understanding dated December 4, 2003, which was amended by First Amendment to Memorandum of Understanding dated March 4, 2008, by and among City, WVU and Commission (collectively, the “MOU”) regarding the construction of a project referred to as the Square at Falling Run, which included a Parking Garage and the construction of a Connector Road; and

WHEREAS, pursuant to the MOU, WVU gave its “Notice Of Exercise Of Option” by which it exercised its option to repurchase certain real estate covered by the MOU, which notice was recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, on October 26, 2011, in Volume 1446, at page 656, as instrument number 429985 (“Notice of Exercise”).

WHEREAS, Lessor, City and Lessee mutually desire to cancel said MOU and the Notice of Exercise, as amended, and release each other from any and all rights, duties and obligations under the MOU and the Notice of Exercise.

NOW THEREFORE, for valuable consideration, the parties hereto intending to be legally bound and to so bind their respective heirs, administrators, successors, assigns, predecessors in ownership or interest, successors in ownership or interest, transferees and assigns, and all of their collective past, present and future parents, subsidiaries, divisions affiliates, owners, employees, presidents, chief executive officers, principals, directors, officers, shareholders, servants, agents,

partners, members, representatives, attorneys, and all other persons, firms, partnerships or corporations affiliated or allied-in-interest with said entities, agree as follows:

1. The MOU is hereby cancelled and terminated as of the Effective Date hereof and is no longer in force and effect;

2. The Notice of Exercise is hereby rescinded, cancelled and terminated as of the Effective Date hereof and is no longer in force and effect.

3. City, WVU and Commission are hereby released from any and all rights, duties and obligations under the MOU and the Notice of Exercise.

4. This Agreement shall be covered and construed and enforced in accordance with laws of the State of West Virginia.

5. This Agreement and the rights and obligations hereunder shall be binding upon and insure to the benefit of the parties hereto, their respective heirs, administrators, successors, assigns, predecessors in ownership or interest, successors in ownership or interest, transferees and assigns, and all of their collective past, present and future parents, subsidiaries, divisions affiliates, owners, employees, presidents, chief executive officers, principals, directors, officers, shareholders, servants, agents, partners, members, representatives, attorneys, and all other persons, firms, partnerships or corporations affiliated or allied-in-interest with said entities.

6. The parties acknowledge that they have read this Agreement after discussing it with their attorneys and that they have reviewed all terms and conditions herein and they understand the meaning and affect thereof and have willingly entered into and executed this Agreement.

7. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter of this Agreement. No oral

understandings, statements, promises or inducements contrary or supplemental to the terms of this Agreement exist.

IN WITNESS WHEREOF, City, WVU and Commission have executed this agreement by the duly authorized representatives thereof. All references to the "Effective Date", or similar references, shall mean the date on which the later of Lessor or City or Lessee shall have executed this Agreement.

CITY:

The City of Morgantown, a municipal corporation

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

WVU:

West Virginia University Board of Governors  
on behalf of West Virginia University, an  
agency of the State of West Virginia

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

COMMISSION:

The City of Morgantown Building  
Commission, a West Virginia public  
corporation

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2012, by \_\_\_\_\_, the duly authorized \_\_\_\_\_,  
of The City of Morgantown, a municipal corporation, for and on behalf of said municipal  
corporation.

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2012, by \_\_\_\_\_, the \_\_\_\_\_ of West  
Virginia University, acting on behalf of the West Virginia University Board of Governors, a  
body politic of the State of West Virginia, on behalf of said body politic.

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the duly authorized \_\_\_\_\_, of The City of Morgantown Building Commission, a West Virginia public corporation, for and on behalf of said corporation.

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

This instrument prepared by:  
William F. Dobbs, Jr.  
Jackson Kelly PLLC  
Post Office Box 553  
Charleston, West Virginia 25322

## EXHIBIT C

### LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT (this "Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 2012 by and among THE CITY OF MORGANTOWN BUILDING COMMISSION, a West Virginia public corporation ("Lessor"), THE CITY OF MORGANTOWN, a municipal corporation and third party beneficiary ("City"), and THE BOARD OF GOVERNORS OF WEST VIRGINIA UNIVERSITY FOR AND ON BEHALF OF WEST VIRGINIA UNIVERSITY ("Lessee").

#### R E C I T A L S:

WHEREAS, Lessor, City and The Square at Falling Run, LLC ("SFR") entered into that certain Ground Lease dated April 17, 2008, a Memorandum of which has been recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1365, at page 161, as amended by that certain Amendment of Lease dated August 19, 2008, of record in the aforesaid Clerk's Office in Deed Book 1375, at page 438 (collectively, the "Lease"), pursuant to which Lessor leased to SFR certain parcels of real estate located in the Fourth and Fifth Wards of the City of Morgantown, West Virginia; and

WHEREAS, SFR is now a debtor in a Chapter 7 bankruptcy proceeding pending in the United States Bankruptcy Court for the Southern District of West Virginia (Case No. 1:11-bk-00753) ("Bankruptcy Court"); and

WHEREAS, pursuant to an order of the Bankruptcy Court entered on \_\_\_\_\_, the Bankruptcy Trustee of the SFR bankruptcy estate, sold, assigned and transferred the Lease to Lessee; and

WHEREAS, Lessor, City and Lessee now desire to terminate the Lease.



NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Lease is hereby terminated in all respects as of the date hereof, and shall have no further force or effect whatsoever.

2. Lessor, City and Lessee are hereby released from any and all rights, duties, obligations and liabilities under the Lease.

3. This Agreement shall be governed by and enforced in accordance with the laws of the State of West Virginia.

4. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, administrators, successors, assigns, predecessors in ownership or interest, successors in ownership or interest, transferees and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first set forth above.

THE CITY OF MORGANTOWN BUILDING  
COMMISSION, a West Virginia public corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



THE CITY OF MORGANTOWN, a municipal corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY, an agency of the State of West Virginia

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the duly authorized \_\_\_\_\_, of The City of Morgantown Building Commission, a West Virginia public corporation, for and on behalf of said corporation.

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the duly authorized \_\_\_\_\_ of The City of Morgantown, a municipal corporation, for and on behalf of said municipal corporation.

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the \_\_\_\_\_ of West Virginia University, acting on behalf of the West Virginia University Board of Governors, a body politic of the State of West Virginia, on behalf of said body politic.

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

This instrument prepared by:

William F. Dobbs, Jr.  
Jackson Kelly PLLC  
Post Office Box 553  
Charleston, West Virginia 25322

# **EXHIBIT D**





For Tax Purposes Only

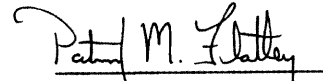
Legend	
Property line	Original lot line
Side of pavement or roadway	Dead lot number
Corporation line	Parcel or index number

Revisions	
1	6-9-61
2	2-15-62
3	11-15-2001 J.E.R.
4	AUG 15, 1973

1-26

COUNTY of MONONGALIA



  
Patrick M. Flatley  
United States Bankruptcy Judge

Dated: Monday, November 05, 2012 1:37:41 PM

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

<i>In re:</i>	)	
	)	
AUGUSTA APARTMENTS, LLC,	)	CASE NO. 1:10-bk-00303
	)	
Debtor.	)	Chapter 7
	)	
McCOY 6, LLC,	)	CASE NO. 1:09-bk-00304
	)	
Debtor.	)	Chapter 7
	)	
THE SQUARE AT FALLING RUN, LLC,	)	CASE NO. 1:11-bk-00753
	)	
Debtor.	)	Chapter 7

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**ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT TO 11 U.S.C. § 363(b), (f), AND (m) AND § 105(a), APPROVING COMPROMISE OF LITIGATION PURSUANT TO BANKRUPTCY RULE 9019 AND APPROVING DISTRIBUTION OF PROCEEDS**

---

THIS MATTER came before the Court on November 2, 2012, on the TRUSTEE'S MOTION FOR ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT TO 11 U.S.C. § 363(b), (f), AND (m) AND § 105(a) AND FOR ORDER PURSUANT TO BANKRUPTCY RULE 9019 APPROVING COMPROMISE OF LITIGATION AND APPROVING DISTRIBUTION OF PROCEEDS (the "Trustees' Motion"), filed by Robert L. Johns, Trustee (the "Trustee") for the bankruptcy estate of Augusta Apartments, LLC ("Augusta"), the bankruptcy estate of McCoy 6, LLC ("McCoy 6"), and the bankruptcy estate of The Square At Falling Run, LLC ("SFR") (collectively, the "Debtors") in the above captioned Chapter 11 cases,



the Trustees' Motion, as approved by this Court, having been served on all parties in interest. Appearing at the hearing were Robert L. Johns, the Trustee, and Wendel B. Turner, of Turner & Johns, PLLC, counsel to the Trustee, Roger Schlossberg, of Schlossberg & Associates, counsel to First United Bank And Trust, Stephen G. Higgins, of Kay Casto & Chaney PLLC, counsel to the City of Morgantown, William F. Dobbs, Jr., of Jackson Kelly PLLC, counsel to West Virginia University Board of Governors on Behalf of West Virginia University, a State Institution of Higher Education, and Edward R. Kohout, counsel to the Warners, as members and equity holders of Augusta Apartments LLC, McCoy 6 LLC and The Square at Falling Run, LLC. The Court having considered the files and records herein and having heard statements of the parties and/or their counsel, and good cause appearing therefor,

**NOW, THEREFORE, THE COURT HEREBY FINDS,<sup>1</sup> THAT:**

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory predicates for the relief sought in the Trustees' Motion and the basis for the approvals and authorizations herein are (i) Sections 105 and 363(b), (f) and (m) of the Bankruptcy Code and (ii) Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") 2002, 6004, 9006, 9007, 9008, 9014 and 9019.

D. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

---

<sup>1</sup> In accordance with Bankruptcy Rule 7052, when appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

E. Proper, timely, adequate and sufficient notice of the Trustees' Motion and the hearing on the Trustees' Motion (the "Sale Hearing") have been provided in accordance with §§ 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, 9014 and 9019, including without limitation the publication of the NOTICE OF MOTION FOR SALE OF ASSETS, NOTICE OF MOTION TO COMPROMISE LITIGATION, NOTICE OF OPPORTUNITY TO BID, AND NOTICE OF HEARING in the *Morgantown Dominion Post*; such notice was good and sufficient and appropriate under the particular circumstances; and no other or further notice of the Trustees' Motion, the hearing on the Trustees' Motion, or of the entry of this Order is necessary or shall be required.

F. A reasonable opportunity to object or be heard with respect to the Trustees' Motion and relief requested therein has been afforded to all parties-in-interest, and third parties have had a full, fair and reasonable opportunity to make a higher or otherwise better offer to purchase the assets that are the subject of the Trustees' Motion. There were no upset bids and no objections to the Trustee's Motion other than by the Warners, which this Court overruled. The Trustee's Motion, as more specifically defined in that certain Asset Purchase Agreement attached to the Trustee's Motion (the "Purchase Agreement") entered into by the Trustee, on behalf of Augusta, McCoy 6 and SFR, First United Bank and Trust ("First United"), and the West Virginia University Board of Governors, on Behalf of West Virginia University, a State Institution of Higher Education ("Purchaser"), provides as follows:

1. The Sale: (i) real property and improvements thereon consisting of approximately 21 acres of land in the Falling Run Road Area of Morgantown, West Virginia, as described in Schedule 1.1(a) (owned by Augusta) and Schedule 1.1(b) (owned by McCoy 6), attached to and made a part of this Order (the "Debtor Land"); certain easements and rights of

way; certain tangible personal property and fixtures located on the Debtor Land and used in connection with the structures on the Debtor Land; all permits, licenses, certificates and other authorizations relating to and necessary in connection with the Debtor Land; and other assets associated with the Debtor Land owned by Augusta and McCoy 6, and (ii) all of the Trustee's right, title and interest in and to the Ground Lease (the "SFR Lease") dated April 17, 2008, among the Morgantown Building Commission (the "Building Commission"), the City of Morgantown, West Virginia (the "City") and SFR (as amended by Amendment of Lease dated August 19, 2008, from the Building Commission to SFR) covering approximately 4.25 acres of vacant land owned by the Building Commission and the City, as described on Schedule 1.1(c) attached to and made a part of this Order (collectively, the "Purchased Assets").<sup>2</sup>

2. The Compromise: In addition to the sale of the Debtor Land and the SFR Lease, the Purchase Agreement provides for the compromise of certain of the Trustee's claims in three sets of lawsuits: (i) an adversary proceeding pending in the SFR bankruptcy case (1:11-ap-60; *First United Bank & Trust v. The Square At Falling Run, LLC, et al.*, the "SFR AP"); (ii) two civil actions relating to the McCoy 6 case (1:11-cv-00054 and 1:11-cv-00055; *McCoy 6 Apartments, LLC, Augusta Apartments, LLC, Kristian E. Warner, et al. v. City of Morgantown, WV, Daniel Boroff, et al.*, the "City Lawsuit"); and, (iii) as against First United, in two adversary proceedings pending in the McCoy 6 bankruptcy case brought by the Trustee against First United and other parties (1:11-ap-00071 and 1:11-ap-00072), in which the Trustee seeks to avoid certain transactions and recover proceeds of these transactions from, *inter alia*, First United (the "§548 Lawsuits"). The Trustee (of McCoy 6) seeks authority to dismiss all of his claims in the City Lawsuit for the sum of \$75,000, payable to First United as the holder of a

---

<sup>2</sup> Notwithstanding other provisions of this Order, to the extent the description of the Purchased Assets set forth herein differs from that set forth in the Purchase Agreement, the terms of the Purchase Agreement shall govern.

first priority security interest in such proceeds (the “Settlement Payment”). In connection with his sale of all right, title and interest in and to the SFR Lease to WVU, the Trustee (of SFR) seeks authority to settle all claims in the SFR AP, by withdrawing his defenses and dismissing with prejudice his counterclaims, with the Bank dismissing its claims with prejudice and the City and Building Commission being dismissed from the SFR AP without prejudice to their position that the SFR Lease has been terminated or is terminable. Finally, the Trustee (of McCoy 6) seeks authority to compromise his claims against First United in the §548 Lawsuits in a manner which effectively results in no recovery by the Trustee against First United in the §548 Lawsuits, but preserves his claims against the other Defendants (collectively, the “Trustee Compromises”).

G. The Trustee has demonstrated a sufficient basis for and has reasonably exercised its sound business judgment in deciding to enter into the Purchase Agreement, to sell and transfer the Purchased Assets to the Purchaser and to enter into the Trustee Compromises. The relief requested in the Trustee’s Motion is in the best interests of the respective Debtors’ Estates, their creditors, and other parties in interest.

H. The Purchased Assets have been adequately and sufficiently marketed and other potential purchasers have had a full and fair opportunity to make an offer for the Purchased Assets; and the Trustee Compromises, which are part and parcel of, and a condition precedent to, the sale of the Purchased Assets, are fully justified, fair and equitable and in the best interests of the respective Debtor’s Estates.

I. The terms and conditions set forth in the Purchase Agreement and the transactions contemplated thereby represent fair and reasonable terms and conditions, including the amount of the Purchase Price, and constitute the highest and best offer obtainable for the Purchased

Assets, constitute the reasonably equivalent and fair market value for the Purchased Assets, and are otherwise fair and adequate under the facts and circumstances before this Court.

J. The aggregate purchase price for the Purchased Assets is Four Million Seven Hundred Forty-Five Thousand Dollars (\$4,745,000.00) cash<sup>3</sup>, plus payment of Trustee's Commissions and certain expenses, as described in Sections 3.1(d), (e) and (f) of the Purchase Agreement (the "Purchase Price"), payable by wire transfer at the closing of the transactions, and payable in the amount of (i) \$100,000 for the Augusta Lot plus up to \$20,000 to satisfy liens superior in priority to First United's Deed of Trust<sup>4</sup>, (ii) \$4,425,000 for the McCoy 6 Parcels, and (iii) \$200,000 (x) for all of the Trustee's right, title and interest in and to the SFR Lease and (y) to compromise the SFR AP. From these transactions, First United will receive \$100,000 proceeds from the sale of the Augusta Lot, \$4,370,000 proceeds from the sale of the McCoy 6 Parcels and \$200,000 from the sale of the SFR Lease/compromise of the SFR AP. In addition, First United, as holder of a lien on the SFR Lease and SFR assets, will receive the funds in the SFR operating account less certain of the Trustee's expenses such as legal fees, commissions and operating expenses (but in no event less than \$42,500), as specified in Section 3.3 of the Purchase Agreement.

K. The total consideration provided by the Purchaser for the Purchased Assets is the highest and best offer received by the Trustee, and the Purchase Price constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) under any other

---

<sup>3</sup> This sum includes WVU's obligation to pay up to \$20,000 to discharge liens senior to the lien of First United on the Assets of Augusta, as described in Section 3.1(d) of the Purchase Agreement.

<sup>4</sup> If the liens on the Augusta Lot exceed \$20,000, WVU has the right to elect not to purchase the Augusta Lot, but instead pay an additional \$100,000 to McCoy 6 for the McCoy 6 Parcels, in which case the \$100,000 is payable to First United, however, the Trustee believes that such liens do not exceed \$20,000.



applicable laws of the United States, any state, territory or possession or the District of Columbia, reasonably equivalent value, fair consideration and fair value for the Purchased Assets.

L. The Purchaser is a purchaser in good faith, as that term is used in the Bankruptcy Code and court decisions thereunder, and is entitled to the protections of Section 363(m) of the Bankruptcy Code. The Purchase Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind, and the sales process was conducted in good faith. The Court has found that the Purchaser has acted in good faith in all respects in connection with this case and the transactions under the Purchase Agreement in that, among other things:

- (1) The Trustee conducted the sale process and negotiated with the Purchaser and First United;
- (2) The Purchaser and First United recognized that the Trustee was free to negotiate with any other party that expressed qualified interest in purchasing the Purchased Assets; and
- (3) All payments to be made by the Purchaser and other agreements or arrangements entered into by Purchaser and First United with the Trustee in connection with the Purchase Agreement have been disclosed.

M. In the absence of a stay pending appeal, the Purchaser and First United will be acting in good faith, pursuant to Section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the Purchase Agreement at any time on or after the entry of the Order.

N. The Purchaser has not violated Section 363(n) of the Bankruptcy Code by any action or inaction. The Purchase Price to be paid by Purchaser was not controlled by an agreement among potential purchasers at any sale or through any bidding or negotiating process. The transactions under the Purchase Agreement may not be avoided, and no damages may be assessed against the Purchaser or any other party under Section 363(n) of the Bankruptcy Code or any other applicable bankruptcy or non-bankruptcy law.

O. The Purchaser would not have agreed to the sale expressed in the Purchase Agreement and would not consummate the transactions contemplated thereby and under this Order if the sale of the Purchased Assets to the Purchaser was not free and clear of all Interests (as defined in paragraph 15 below) of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Interests.

P. Except as may otherwise be provided in this Order, the Trustee may sell the Purchased Assets free and clear of all Interests because, in each case, one or more of the standards set forth in Section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Interests and (ii) non-Debtor parties, who did not object, or who withdrew their objections, to the sale of the Purchased Assets and the Trustee's Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. With respect to any and all entities with an Interest in or against the Purchased Assets either (i) applicable nonbankruptcy law permits the sale free and clear of such Interest, (ii) such Interest is in bona fide dispute, or (iii) such entity could be compelled to accept a money satisfaction of such Interest, so that the conditions of Section 363(f) of the Bankruptcy Code have been met, and such entities are adequately protected by having their Interests, if any, attach to the proceeds of the sale of the Purchased Assets.

Q. The Interests could be discharged under the Bankruptcy Code, so that the Purchased Assets can be sold free and clear of those Interests under Section 105(a) of the Bankruptcy Code.

R. The sale and transfer of the Purchased Assets constitute transfers pursuant to the Bankruptcy Code, which shall not be taxed under any law imposing a stamp tax or similar tax.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Trustee's Motion is granted. All objections to the Trustee's Motion or the relief requested therein have been withdrawn, or are hereby overruled on the merits for the reasons stated by the Court on the record at the Sale Hearing.

2. Notice of the Sale Hearing and Trustee's Motion was proper, timely, fair, and adequate under the circumstances and complied with the Bankruptcy Code and the Bankruptcy Rules.

**Approval of Sale**

3. The Trustee has established sound business justifications in support of the Sale. After considering the circumstances of this case, the Court determines that the Purchase Price presents the best opportunity for the Debtors' estate to realize the highest distribution possible to all creditors. The Purchase Price, as approved herein, is the highest and best offer for the Purchased Assets. The Purchase Price constitutes full and adequate consideration and reasonably equivalent and fair market value for the Purchased Assets. The transfer of the Purchased Assets on the Closing to Purchaser for the Purchase Price is in the best interest of the Debtors' estate, their creditors and all parties-in-interest.

4. The Purchase Agreement is hereby approved in all respects and shall be deemed in full force and effect, binding and benefiting the Trustee, the Debtors, First United and the

Purchaser, and the transactions contemplated thereby be, and hereby are, authorized and approved in all respects. The Purchase Agreement and any documents executed in accordance with its terms shall not be subject to rejection.

5. Pursuant to the provisions of Sections 105 and 363 of the Bankruptcy Code, the Trustee is authorized, empowered and directed to implement and consummate all of the transactions (the "Sale") contemplated by the Purchase Agreement with First United and the Purchaser and to sell the Purchased Assets, as described in the Purchase Agreement, to Purchaser for the Purchase Price.

6. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Trustee to sell and transfer the Purchased Assets to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

7. Any amounts that become payable by the Debtors to the Purchaser pursuant to the Purchase Agreement (and related agreements executed in connection therewith) as of the date of the completion of the closing ("Closing") of the Sale ("Closing Date") shall constitute allowed administrative expenses of the Debtors' estate and shall be paid by the Debtors in the time and manner provided for in the Purchase Agreement.

8. The Trustee has carried the burden of demonstrating that the proposed sale will aid the Debtors' liquidation or reorganization, and the Trustee has met the established standards regarding sales outside the ordinary course of business pursuant to Section 363(b)(1) of the Bankruptcy Code.

9. The transactions contemplated in the Trustee's Motion, as approved and implemented herein, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including but not limited to Sections 363(b), (f) and (m).

10. The Trustee Compromises are fair and reasonable and in the best interests of the McCoy 6 and SFR bankruptcy estates for the reason, in part, that they are a condition to the larger overall transaction; moreover, the Trustee Compromises are inherently fair and justified under the circumstances of this case. The payment of \$75,000 to the Trustee in settlement of the City Lawsuit saves the McCoy 6 bankruptcy estate significant expense and delay from the prosecution of questionable and uncertain claims. The resolution of the SFR Lawsuit, which is extremely complicated, could take years through the court system and result in significant legal fees and related expenses, is unquestionably reasonable and reflects appropriate business judgment on the part of the Trustee. The compromise of the Trustee's (McCoy 6) claims against First United in the §548 Lawsuits is a condition to and requirement of First United's consent to the Trustees' Proposed Sale. Moreover, such compromise will not affect the Trustees' ability to assert his claims against the other defendants in the §548 Lawsuits, and it is unlikely that the settlement will result in materially less recovery in the §548 Lawsuits.

**Good Faith**

11. The Purchaser is a third party purchaser unrelated to the Trustee or the Debtors, and the terms of Purchaser's purchase of the Purchased Assets as set forth in the Purchase Agreement are fair and reasonable under the circumstances of this case.

12. The transfer of the Purchased Assets to Purchaser represents an arms-length transaction and has been negotiated in good faith between the parties. Purchaser, as transferee of the Debtors' property, is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of Section 363(m) of the



Bankruptcy Code. Purchaser has proceeded in good faith in all respects in connection with this proceeding in that:

(a) The Purchaser recognized that that Trustee was free to deal with any other party interested in acquiring the Purchased Assets;

(b) All payments to be made by Purchaser in connection with the transaction have been disclosed; and

(c) The Purchaser has not violated Section 363(n) of the Bankruptcy Code by any action or inaction.

13. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith buyer under Section 363(m) of the Bankruptcy Code, including that in the absence of a stay of this Sale Order, if Purchaser elects to close under the Purchase Agreement at any time after entry of this Sale Order, then, Purchaser shall be entitled to the protections of Section 363(m) of the Bankruptcy Code if this Sale Order or an authorization contained herein is reversed or modified on appeal.

**Free and Clear Sale**

14. Pursuant to Section 363(f) of the Bankruptcy Code and this Court's general equitable powers under Section 105(a) of the Bankruptcy Code, upon the Closing of the Sale, Purchaser shall take title to and possession of the Purchased Assets, free and clear of the Interests, and Purchaser shall not assume or be obligated to pay, perform or otherwise discharge and shall have liability or responsibility arising under or related to the Interests.

15. As set forth in the Purchase Agreement and Trustee's Motion, the "Interests" of which the Purchased Assets are sold free and clear, include, without limitation, recorded or unrecorded, asserted or unasserted, known or unknown as of the applicable Closing, now existing or hereafter arising, fixed or contingent, interests, liens, claims, encumbrances, pledges,

mortgages, security interests, conditional sale or other retention agreements, obligations, guaranties, debts, rights, contractual commitments, judgments, demands, easements, charges, defects, options, rights of first refusal, and any other restrictions or interests of any kind or nature whether imposed by agreement, understanding, law, equity, or otherwise, including, without limitation:

(a) those liabilities specifically retained by the Debtors pursuant to Section 2.1 of the Purchase Agreement;

(b) obligations, debts, liabilities or claims incurred as a result of the use, status, operation, leasing, ownership or management of any of the Purchased Assets or the actions, omission, claims or choses in action of the Debtors or their predecessors prior to the Closing, or any accident, injury or death occurring prior to the Closing;

(c) any and all obligations and/or liabilities to the extent attributable to defaults, conditions, status, events, actions or omissions or accidents, claims, injuries, deaths or other damages occurring prior to the Closing;

(d) any fines, assessments or penalties assessed against or payable by the Debtors for violations that occurred prior to the Closing Date;

(e) any mortgages, unrecorded claims in or against real estate, security interests, options, liens or encumbrances of any kind, including any administrative expenses or priority claim asserted herein and any interest of a party to a title retention arrangement intended as security;

(f) any demands or claims of creditors of, or claims against, the Debtors;

(g) any interests of shareholders, members or other interests in the Debtors;

(h) claims of lessees under leases with the Debtors, whether entered into before or after the date of the respective Debtors' bankruptcy petitions;

(i) any person claiming through, by or on behalf of the Debtors, whether such claim, demand, lien or interest be direct or indirect, known or unknown, or claiming that the Purchaser is a successor or successor-in-interest or pursuant to any other theory, including without limitation any and all obligations, liabilities, conditions, covenants, requirements or responsibilities under: (i) any agreement, indenture, grant agreement, or other contract with the City of Morgantown, The Morgantown Building Commission, the West Virginia Economic Development Authority or any other governmental agency or authority, or with an lender, creditor or any other entity or individual; (ii) The Square At Falling Run Planned Unit Development and/or the Outline Plan for The Square At Falling Run Planned Unit Development; or (iii) any other agreement, indenture, or similar contract pertaining to The Augusta on the Square, and/or The Square At Falling Run; (iv) any employment or labor agreements; (v) any and all obligations and/or liabilities arising out of or incurred with respect to any of the Debtors' employees, former employees, agents or consultants, employment contracts, compensation agreements, employee benefit plans, or any other obligations (including but not limited to unemployment, disability, severance, pension, health, medical, life, dental, or workers' compensation or disease obligations) owed to or covering any employee, former employee, agent or consultant of the Debtors or their predecessors; (vi) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claims, including, without limitation, claims that might otherwise arise under or pursuant to (A) the Employee Retirement Income Security Act of 1974, as amended, (B) the Fair Labor Standards Act of 1938, as amended, (C) Title VII of the Civil Rights Act of 1964, as amended, (D) the

Federal Rehabilitation Act of 1973, as amended, (E) the National Labor Relations Act, as amended, (F) the Worker Adjustment and Retraining Act, as amended, (G) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act of 1967, as amended, (H) the Americans with Disabilities Act of 1990, as amended, (I) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), (J) the Jones Act, as amended,<sup>5</sup> (K) the Longshoremen's and Harbor Workers' Compensation Act, as amended, (L) state discrimination laws, (M) state unemployment compensation laws or any other similar state laws, or (N) any other state or federal benefits or claims relating to any employment with the Debtors or any predecessors; (vii) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims; (viii) environmental or other claims or liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste located on or below the surface of the real property portion of the Purchased Assets) that may be asserted on any basis, including, without limitation, under (a) the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 U.S.C. §§ 1251 *et seq.*; (b) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9601 *et seq.*; (c) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 *et seq.*; (d) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; (e) and in the regulations adopted and publications promulgated pursuant thereto, or in any other federal, state or local environmental law, ordinance, rule or regulation; (ix) any bulk sales or similar law; (x) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (xi) successor or vicarious liabilities of any kind or character;

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<sup>5</sup> The Jones Act, formerly codified at 46 U.S.C. 688, was recently recodified to 46 U.S.C. §§ 30104, 30105.

(j) any theory of antitrust, labor law, de facto merger or substantial continuity; and

(k) liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the applicable Purchased Assets prior to the Closing; and

(l) claims against any of its Debtors' predecessors or affiliates.

Provided however, Purchaser shall not be relieved of liability with respect to obligations accruing from and after the Closing.

16. Except as expressly provided for in this Order or the Purchase Agreement, the Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets. Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of Interests, and absent the provisions of this Order providing for a sale free and clear of Interests, Purchaser would not have purchased the Purchased Assets. The consideration given by Purchaser shall constitute valid and valuable consideration for the releases of the Interests, which releases shall be deemed to have been given in favor of Purchaser by all holders of Interests against the Debtors or the applicable Purchased Assets.

17. Effective on the Closing Date, all persons and entities, to the extent allowed by law, are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, based upon or with respect to an Interest of which the sale of the Purchased Assets is free and clear under the terms of this Order, including, without limitation, the following actions:



(a) Commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors, assets or properties;

(b) Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, its successors, assets or properties;

(c) Creating, perfecting or enforcing any lien or other encumbrance against the Purchaser, its successors, assets or properties;

(d) Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its successors;

(e) Commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the Purchase Agreement or actions contemplated or taken in respect thereof; or

(f) Revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

18. Purchaser does not constitute a successor to the Debtors by reason of any theory of law or equity because:

(a) Except as otherwise set forth in the Purchase Agreement, Purchaser is not expressly or impliedly agreeing to assume any of the Debtors' liabilities or debts;

(b) The transactions contemplated by the Purchase Agreement do not amount to a consolidation, merger or de facto merger of Debtors and Purchaser;

(c) Purchaser is not merely a continuation of the Debtors; and

(d) The transactions contemplated by the Purchase Agreement are not being entered into fraudulently or in order to escape liability from the Debtors' debts.

**Transfer of Purchased Assets**

19. Subject to the fulfillment of the terms and conditions of the Purchase Agreement, at the Closing, the Trustee will sell, transfer, assign and convey to the Purchaser and/or its assigns all of the Debtors' rights, title and interest in, to and under the Purchased Assets.

20. The Trustee is authorized, empowered and hereby directed to fully perform under, consummate and implement the terms of the Purchase Agreement together with any and all additional acts, instruments, and documents that may be reasonably necessary or desirable to implement and carry out the terms and intent of the Purchase Agreement, this Sale Order, and the sale of the Purchased Assets contemplated thereby and to take all further actions as may reasonably be requested by the Purchaser in order to consummate, evidence, or confirm the provisions contained in such documents or for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession in the Purchaser any or all of the Purchased Assets without any further corporate action or orders of this Court, including without limitation delivery of special warranty deeds, bills of sale, assignments, and other such documentation to evidence the transfers required herein.

21. The Purchaser shall have no obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to its obligations to do so have been met, satisfied, or waived.

22. The Purchaser may consummate the transactions under the Purchase Agreement at any time after the entry of this Order (including immediately thereafter) by waiving all closing conditions set forth in the Purchase Agreement that have not been satisfied and by proceeding to close such transactions, without any notice to the Court, any pre-petition or post-petition creditor of the Debtors, or any other party in interest.

23. Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the relevant Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are directed to be transferred to Purchaser as of the Closing Date, except to the extent otherwise provided in the Purchase Agreement. Without limitation of the foregoing, the Trustee shall cooperate in the transfer of such permits, licenses, registrations, approvals, and authorizations to the Purchaser.

24. At the Closing, the Purchase Price and the Settlement Payment paid to the Trustee shall be disbursed upon the Trustee's specific written instructions for estate disbursements by checks or wire transfers from the closing attorney, Jackson Kelly PLLC's, Client Trust Account as follows:

- (a) Payment of all normal and ordinary settlement charges;
- (b) Payment of the Debtors' share of the real estate taxes;
- (c) Payment of Trustee's costs of the sale;
- (d) Payment of an aggregate of \$4,787,500 to First United (allocated to the respective Debtors as specified in the Purchase Agreement and as described in paragraph J. of this Order) plus any additional sums remaining in the SFR bank account at Closing and payable to First United, in accordance with Section 3.3 of the Purchase Agreement;
- (e) Payment of up to \$20,000 to satisfy (x) two tax liens against the Augusta Lot in favor of The State of West Virginia, Workforce West Virginia, in the respective amounts of \$1,113.75 and \$1,169.44 plus interest and costs and (y) a tax lien against the Augusta Lot in favor of The City of Morgantown in the amount of \$6,531.30 plus interest and costs;

(f) Payment to satisfy the judgment lien of Copies Copies Copies against SFR, of the sum of \$613.50 plus interest from August 30, 2008 at 8.5%; and

(g) Payment, on an interim basis and subject to a final order of this Court, to Robert J. Johns of the sums paid by Purchaser for the Trustee's statutory commission, as specified in Section 3.1(d), (e) and (f) of the Purchase Agreement; not to exceed the Trustee's statutory commission payable under 11 U.S.C. § 326(a);

(h) Payment of the remainder of the Purchase Price into the Debtor's respective accounts, to be held pending further orders by the Court.

Neither Purchaser nor Jackson Kelly PLLC will be liable for any disbursements made in accordance with the Trustee's written instructions.

25. The Trustee is authorized to cooperate with Purchaser in order for Purchaser to obtain quiet enjoyment of the Purchased Assets including putting Purchaser into full possession of the Purchased Assets. Except as otherwise expressly provided in this Order, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

26. Effective as of the Closing, the Purchaser, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Purchaser, its successors and assigns, to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Purchaser, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the

Purchaser, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and to do all acts and things with respect to the Purchased Assets which the Purchaser, its successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Trustee.

27. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Interests shall be self-executing, and neither the Trustee nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order. Without limitation of the foregoing, a certified copy of this Order may be filed with the appropriate Clerk and/or recorded with the appropriate Recorder to act to cancel any Interests of record. The filing or recording of this Order shall provide full notice of the contents of the Order. In addition, on or before the Closing Date, all parties holding Interests of any kind are authorized and directed to execute such documents and to take all other actions as may be necessary to document the release of any Interests of any kind against the Purchased Assets. If any person or entity that has filed financing statements or other documents or agreements evidencing any Interests in or against the Purchased Assets shall not have delivered to the Purchaser, within a reasonable time after request therefore, termination statements, instruments of satisfaction, or releases of all such Interests with respect to the Purchased Assets, the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets.

28. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Purchaser under the Purchase Agreement and/or a bill of sale



or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

29. Except as expressly provided in this Order, the Purchaser is not assuming nor shall they nor any affiliate or subsidiary of it be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the transactions contemplated by the Purchase Agreement, or any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Purchase Agreement, which liabilities, debts, and obligations are Interests and are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any affiliate or subsidiary of the Purchaser.

**Additional Provisions**

30. This Order is and shall be binding upon and govern the acts of all entities to the extent allowed by law, including, without limitation, all filing agents, filing officers, county clerks, title agents, title companies, recorders of deeds of trust, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

31. The Purchaser has not assumed and is otherwise not obligated for any of the Debtors' liabilities other than as provided in this Order.

32. The transfer of the Purchased Assets, and the execution and delivery of any instrument of transfer by the Debtors pursuant to the Purchase Agreement or this Order shall not be taxed under any law imposing a real estate tax, transfer tax, recording tax, sales tax, a stamp tax, or a similar tax.

33. The automatic stay provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Purchase Agreement and the provisions of this Order.

34. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estate.

35. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the Purchase Agreement.

36. There were no brokers involved with the negotiation or consummation of the Purchase Agreement, and, therefore, the Trustee, the Debtors, the Purchaser and First United shall not be liable for any brokers' commissions.

37. Notwithstanding Bankruptcy Rules 6004 and 7062, this Order shall not be stayed and shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser are free to close under the Purchase Agreement at any time, including immediately upon entry of this Order, subject to the terms of the Purchase Agreement. If, in the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser close under the Purchase Agreement, the Purchaser shall be deemed to be acting in "good faith" and shall be entitled to the protections of § 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Purchase Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

38. To the extent any provisions of this Order conflict with the terms and conditions of the Purchase Agreement, the terms and conditions of this Order shall govern and control, except where the provisions of the Order specify that the provisions of the Purchase Agreement control.

39. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

40. This Court shall retain jurisdiction even after the closing of this case to:

(a) Interpret, implement and enforce the terms of this Order and the Purchase Agreement, all amendments thereto and any waivers or consents thereunder and each of the agreements executed in connection therewith in all respects;

(b) Decide any disputes concerning this Order, the Purchase Agreement or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and all issues and disputes arising in connection with the relief authorized herein;

(c) Protect the Purchaser, First United, and the Purchased Assets against any of the Interests as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability;

(d) Enter orders in aid or furtherance of (i) the transfer of possession and control from the Trustee to the Purchaser and (ii) the transactions contemplated by the Purchase Agreement or to ensure the peaceful use and enjoyment of the Purchased Assets by the Purchaser;

(e) Compel delivery of all Purchased Assets to the Purchaser;

(f) Adjudicate any and all disputes concerning alleged Interests in and to the Purchased Assets including the extent, validity, enforceability, priority, and nature of any such alleged Interests; and

(g) Adjudicate any and all disputes relating to the right, title or interest of the Debtors or the Estate in the Purchased Assets and the proceeds thereof.

41. The Clerk is directed to transmit copies of this Order to the parties-in-interest.

Submitted by:

/s/ Robert L. Johns

Wendel B. Turner [WV S.B. # 3823]

Robert L. Johns [WV S.B. # 5161]

TURNER & JOHNS, PLLC

216 Brooks Street, Suite 200

Charleston, WV 25301

*Counsel for the Trustee*



**SCHEDULE 1.1(a)**

**Description of Augusta Real Property**

<b><u>Map:</u></b>	<b><u>Parcel:</u></b>	<b><u>Description:</u></b>	<b><u>Recording Information:</u></b>
20	426	Part Lot 5, Hoffman Addition, Fourth Ward 357 Falling Run Road	DB 1336/480

**SCHEDULE 1.1(b)**

**Description of McCoy 6 Real Property**

<b><u>Map:</u></b>	<b><u>Parcel:</u></b>	<b><u>Description:</u></b>	<b><u>Recording Information:</u></b>
8B	27	Lots 4,5,6,7 BW Harris Addition – Braddock St, Morgan District	DB 1317/184
14	481	Lot 15 x 118, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Eight therein)
20	231	Lot 14 (23) – 14 Jones/305 Stewart, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixty therein)
20	391.1	Pt Lot 11 or .0477 Ac, Hoffman Addition – Yoke Street, Fourth Ward	DB 1247/115
20	392	Pt Lot 11 or .0516 Ac, Hoffman Addition – Stewart Street, Fourth Ward	DB 1244/1
20	393	Pt Lot 11, Hoffman Addition, 33& 33 ½ Yoke St, Fourth Ward	DB 1206/466
20	399	Lot 29, Beauty Terrace Addition - 254 Stewart St, Fourth Ward	DB 1317/187
20	415	Pt Lots 9 & 10 & Strip, Block A, Univ. Pl Add #2, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty therein)
20	462	Lot 250 x 262 Irr – 25 Glenn St, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
20	462.1	Lot 125 x 262 Irr, Braddock Street and Falling Run Road, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
20	507	Bl 6, Lots 40 to 45 Inc, University Place Addition #2 – 26 Outlook, Fifth Ward	DB 1311/113
20	512	Bl 6, Lot 8, University Place Addition #2, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Two therein)
20	513	Bl 6, Lot 7, University Place Addition #2, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Two therein)
20	514	Bl 6, Lot 6, University Place Addition #2 - 348 Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty One therein)

<b>Map:</b>	<b>Parcel:</b>	<b>Description:</b>	<b>Recording Information:</b>
20	P/O 516	P/O Bl 6, Lots 3,4,5, University Place Addition #2 - 348 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty therein)
20	P/O 517	P/O Bl 6, Lots 1,2, University Place Addition #2 - 336 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Twenty Nine therein)
20	P/O 518	P/O Bl B, Lot Pt 8, Fife Addition - 332 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Five therein)
20	P/O 519	P/O Bl B, Lot Pt 7,8, Fife Addition - 328 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Thirty Four therein)
20	522	Bl B, Lot 4, Fife Addition - 312 Falling Run, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Forty Six therein)
20	523	Bl B, Lot 3, Fife Addition - 308 Falling Run Road, Fifth Ward	DB 1224/254
20	532	Bl B, Lot 12, Fife Addition - 1872 University Avenue, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifteen therein)
20	533	Lot 13, Hayes Addition - 1866 University Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Forty One therein)
20	541	Bl A, Lot 4, Hayes Addition - 725 College Ave, Fifth Ward	DB 1177/587
20	542	Bl A, Lot 5, Hayes Addition - 727 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Twenty Five therein)
20	545	Bl A, Lots 13 - 17, Fife Addition - College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Six therein)
20	545.2	Bl A, Lots 11 & Pt of Lot 12, Fife Addition - 747 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Three therein)
20	546	Bl A, Lot 10, Fife Addition - 749 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. One therein)
20	547	Bl A, Lot 9, Fife Addition - 751 College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Fifty Two therein)
20	548	Bl 6, Lts 51 thru 56, Pt Lot 57, University Place Addition #2, Fifth Ward	DB 1219/207
20	549	Bl 6, Part of Lt 57, University Place Addition #2, Fifth Ward	DB 1219/207
20	558	Bl 1, Lots 4-11 Inclusive, Wilson Addition - 50	DB 1233/290

<u>Map:</u>	<u>Parcel:</u>	<u>Description:</u>	<u>Recording Information:</u>
		Outlook Street, Fifth Ward	
20	559	Lot 80 x 200 – 551 Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
20	560	Lot 1-B, Wilson Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
20	578	Bl B, Lot 3, Pt Lts 2&4, Atwood Addition – 820 College Ave, Fifth Ward	DB 1219/204
20	663	P/O Annulled Rainy St, Fifth Ward	DB 1312/350
21	12	6.0 Ac - 684 Braddock Street, Fourth Ward	DB 1233/492 & DB 1181/92 (Tract No. Nine therein)
21	16	3.35 Ac, Falling Run Road, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Sixteen therein)
21	23	2.95 Ac, College Ave, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Seventeen therein)
21	24	Bl 14, Lots 10, 11, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	38	Bl 11, Lots 19 to 22, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	39	Bl 10, Lots 15 to 19, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	56	Bl 7, Lots 17-19, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)
21	57	Bl 6, Lots 10 to 14, All Undeveloped Prop, Beechwood Park Addition, Fifth Ward	DB 1233/492 & DB 1181/92 (Tract No. Eighteen therein)

**SCHEDULE 1.1(c)**

**Description of SFR Property**

The property underlying and subject to the SFR Lease is more particularly described as follows:

All of the following described lots or parcels of real estate, together with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying, and being in the Fourth and Fifth Wards of The City of Morgantown, Monongalia County, West Virginia, and more particularly bounded and described as follows, to-wit:

**University Place No 1 (Fourth Ward):** Plat recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 270, at Page No. 549.

**Parcel One - Block A (Fourth Ward, Tax Map 20, Parcels 394, 395, 396, 397, 407, 408, 409, 416, 417, and 419):** All of Lot Nos. 2, 3, 4, 5, 6, 7, 8, 11, 12, and 13, Block A, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Flat is recorded in said Clerk's Office in Deed Book No. 270, at Page No. 549.

**Parcel Two (Fourth Ward, Tax Map 20, Parcels 414):** The following portions of Lot No. 10, Block A, as laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid, and said parcels are described as follows:

**Tract One:** All that certain lot or parcel of land fronting 20 feet on the East side of College Avenue and extending back with a uniform width along the Western line of Lot No. 11, owned by Manasa M. Creel, to the lands of Oscar Custafson, and being the Southwestern half of the Southern 20 feet of Lot No. 10, in Block A, in University Place.

**Tract Two:** All that certain lot or parcel of land fronting 20 feet on the Southwest side of Yoke Street, and extending back along Lot No. 11 with a uniform width for a distance of 45 feet, and being designated as the Southeastern 20 x 45 feet of Lot No. 10, in Block A, in University Place.

**Tract Three:** All that certain lot or parcel of land fronting 25 feet on the Southern side of Yoke Street, and extending back with a uniform width a distance of 45 feet, and being designated as the Northern half of the Eastern end of Lot No. 10, in Block A, in University Place.

There is excepted and reserved from Tract Three above-described, a strip or parcel



of real estate 10 feet wide and 45 feet in length as was conveyed by William J. Jones, widower, to Clarence W. McCutcheon, et ux., by Deed dated the 24th day of August, 1948, and recorded in said Clerk's Office in Deed Book No. 241, at Page No. 25, and described therein as beginning at the Northeast corner of a lot owned by McCutcheon, which corner is on the South side of Yoke, and extending thence 10 feet with the Southern side of Yoke Street; thence in a line parallel with the line of said McCutcheon 45 feet; thence parallel with Yoke Street 10 feet; thence with McCutcheon Lot 45 feet to the point and place of beginning.

**Parcel Three - Block B (Fourth Ward, Tax Map 20, Parcels 403, 404, 404.1, 405, and 406):** All of Lot Nos. 1, 2, 3, 4, and 5, Block B, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid.

**Parcel Four - Block C (Fourth Ward, Tax Map 20, Parcels 411, 412 and 413):** All of Lot Nos. 1, 2, 3, 4, and 5, Block C, as the same are laid down and designated upon the Official Sales Map or Plat of University Place No. 1, a copy of which said Official Sales Map or Plat is recorded in said Clerk's Office as aforesaid.

**Parcel Five (Fourth Ward, Tax Map 20, Part of Parcel 397):** Being the same property that *was* conveyed to I. G. Lazzelle by Jacob Guseman and Elizabeth A. Guseman, his wife, by Deed dated the 24th day of April, 1903, and recorded in said Clerk's Office in Deed Book No. 71, at Page No. 313, and therein described as follows:

Beginning at a point in the division line of the Grantor, Jacob Guseman and the Land of the Grantee, where two (2) of the lines of the parcels of land hereby conveyed intersect two (2) of the lines of the parcel of land this day conveyed to the said Jacob Guseman by the said I. G. Lazzelle and wife, which point is 25.1 feet from the Northwestern corner of the land of the said I. G. Lazzelle, and running thence in a Northeasterly direction with said division line to said corner, a distance of 25.1 feet; thence in a Westerly direction with Stewart Street to the Northwestern corner of land hereby conveyed, a distance of 18 feet; thence in a Southerly direction, a distance of 21.3 feet to the point and place of beginning. This parcel appears to be 18 feet on Stewart Street, adjoining the Northern part of Lot No. 2, 21.5 feet and running back to the beginning 21.3 feet.

There is excepted and reserved from Lot No. 2, Block A, University Place No. 1, and Parcel No. 5 of this Deed the following described tract or parcel of real estate: Being a rectangular strip of ground parallel to and adjoining Stewart Street being known as Number 270 Stewart Street, said parcel of land having a uniform width of 3.25 feet and a length of 33 feet.

**Parcel Six:** All of that part of Sycamore and Lee Streets that were annulled by Common Council of Morgantown Ordinance adopted on November 26, 1940, and recorded in said Clerk's Office in Deed Book No. 687, at Page No. 610.

**Parcel Seven (Fifth Ward, Tax Map 20, Parcel 520):** Fife Addition, Plat recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

All of Lot No. 6, and the Western 8 feet of Lot No. 7, in Block "B", as laid down and shown on the Plan of Fife Lots as recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288; which said Lot No. 6 fronts on Falling Run Avenue for a distance of forty (40) feet, and extends back with line of Lot No 5, in said Block, on the West for a distance of 67.5 feet to a 20 foot street, and with the line of Lot No. 7, in said Block, on the East for a distance of 75.2 feet to said 20 foot street, and on which said 20 foot street said Lot fronts for a distance of 40 feet; and, said part of said Lot No. 7, fronts for a distance of 8 feet on Falling Run Avenue, and extends back with line of said Lot No. 6 for a distance of 75.2 feet on the West, and with the line of property owned by the Athens Building and Loan Association, formerly owned by M. M. Creel, on the East for a distance of approximately 80 feet to said 20 foot street.

**Parcel Eight (Fifth Ward, Tax Map 20, Parcels 521 and Part 522):** All of Lot No. 5, Block B, as the same is laid down and designated on the Official Sales Map or Plat of the Fife Addition, a copy of which said Sales Map or Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

**Cyrus K. Fife Addition (Fifth Ward):** Plat recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496.

**Parcel Nine (Fifth Ward, Tax Map 20, Parcel 527):** Part of Lot No. 7 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

Beginning at an iron pin, corner of Lot Nos. 7 and 9, in Falling Run Street, and running thence with the division line of said Lots in a Southerly direction 88 feet to an iron pin on Ray Street, another corner of Lot Nos. 7 and 9; thence with said Ray Street in a Westerly direction 39 feet to an iron pin corner to an iron pin on Falling Run Street, said pin being located 1 1/2 feet East of the corner of Lot Nos. 7 and 8; thence with Falling Run Street in an Easterly direction 36 1/2 feet to the place of beginning.

**Parcel Ten (Fifth Ward, Tax Map 20, Parcel 528):** All of Lot No. 8 and a small triangular parcel of Lot No. 7 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

Beginning at a point on Falling Run Street, corner to Lot Nos. 8 and 10 of the Official Sales Map of the Cyrus K. Fife Plan Of Lots as surveyed by J. G. Samsell, Engineer, on the 19th day of May, 1898, which Plat is recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496, and running thence in an Easterly direction along Falling Run Street, 39.5 feet to a stake, which point is 18 inches East of the corner of Lot Nos. 7 and 8 in said Plan Of Lots; thence leaving said Falling Run Street and running in a Southerly direction 83.5 feet to a stake in Ray Street, corner to said Lot Nos. 7 and 8; thence with Ray Street in a Westerly direction, 39 feet to a stake; thence in a Northerly direction, following the division line between Lot Nos. 8 and 10, as they are laid down on said Plat, 78 1/2 feet to the place of beginning; and being all of Lot No. 8 and a small triangular piece of land off of the Western side of Lot No. 7, having a frontage

on Falling Run Street of 18 inches and running back therefrom with said Lot No. 8 to a point at the original corner between Lot Nos. 7 and 8 on said Plat,

**Parcel Eleven (Fifth Ward, Tax Map 20, Parcel 531):** All of Lot No. 11 of the Cyrus K. Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

And being part of the same property that was conveyed to The City of Morgantown, a municipal corporation, by McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by Deed dated the 20th day of December, 2004, which is of record in said Clerk's Office in Deed Book No. 1285, at Page No. 39.

**Parcel Twelve (Fifth Ward):** Parcel No. 524: Beginning at a certain point corner to Lots No. 2 and No. 3 on Ray Street, now known as Rainy Street, thence with said Ray Street, now known as Rainy Street 50 feet to corner of Lot Nos. 1 and No. 2; thence along said Lot No 1, 86.5 feet to Falling Run Street; thence along said Falling Run Street, 50 feet to the corner of Lot No. 3; thence along said Lot No. 3, 80.7 feet to the beginning, and being the same lot or parcel known as Lot No. 2, in Block B in the "Fife Addition" to the City of Morgantown, West Virginia, as surveyed and platted by Russell L. Morris, C.E.

**Parcel Thirteen (Fifth Ward):** Parcel No. 525: Beginning at a point on the Southern property line of Falling Run Road (formerly known as Falling Run Street), corner to Lot No. 9 of the Plan Of Fife Lots; thence with the Southern property line of said Falling Run Road, N. 71° 07' E. 50.00 feet to a point, corner to Lot No, 2, in Block B, now or formerly owned by Charles E. and Wilhelmina B. Penrod, his wife, thence S. 26° 02' E. 86.50 feet to point on the Northern side of a right-of-way for a 20 foot street (formerly known as Ray Street); thence with the same, S. 64° 30' W. 50.00 feet to a point; thence N. 25° 47' 30" W. 92.26 feet to the place of beginning, being Lot No. 1, in Block B, in the Fife Addition to The City of Morgantown, as laid down and designated on a Map or Plat of the Fife Lots, prepared by Morris and Bums, Engineers, in 1903, which Plat is of record in said Clerk's Office in Deed Book No, 93, at Page No. 288.

**Parcel Fourteen (Fifth Ward):** Parcel No. 526: All of Lot No. 9, as the same is laid down and designated upon the Official Sales Map or Plat of the C. K. Fife Addition, a copy of which said Plat is duly recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496,

**Parcel Fifteen (Fifth Ward):** Parcel No. 529: Beginning at the corner of a parcel of land conveyed to J. J. Guseman by Clark B. Hall under deed dated the 21st day. of January, 1905, and recorded in said Clerk's Office in Deed Book No. 83, at Page No. 28, at a stake in the line running with Falling Run Street, N. 71° 7' E. 35 feet to the corner of Lot No. 8; thence with the Western line thereof, S. 20° 33' E. 78.65 feet to Ray Street, now known as Rainy Street; thence with the same, S. 39° 57' W. 16.25 feet to the corner of said J. J. Guseman's lot, and with the same, N. 33° 53' W. 90.03 feet to the point and place of beginning, and being a part of Lot No, 10 of the Cyrus K. Fife Plan Of Lots, a copy of which Plan is recorded in said Clerk's Office in Deed Book No. 92, at Page No. 496.

**Parcel Sixteen (Fifth Ward):** Parcel No. 530: Beginning at a point in the Southeasterly line of Beverly Street, now called University Avenue, a corner to Lot No. 11, and running thence with said avenue, N. 36° 57' E. 17 feet and 5/8 inches to the intersection of said avenue with Falling Run Street; thence N. 71° 7' E. 38 feet and 9 inches with Falling Run Street to a stake; thence from said stake at a point in Falling Run Street; S. 33° 53' E. 90.03 feet to a point in line of Ray Street, now known as Rainy Street; thence with Ray Street, now known as Rainy Street, S. 39° 57' W. 20 feet to the corner of Lot No. 11; thence with said Lot No. 11, N. 55° 3' W. 105.06 feet to the place of beginning, and being part of Lot No. 10, in Block 8 of the Fife Addition to said City, as shown upon a Plat thereof recorded in said Clerk's Office in Deed Book No. 92, at Page No. 490.

Such lot or parcel is actually part of Lot No. 10 as laid down and designated upon the Plan of said lots laid out for Cyrus K. Fife by J. G. Samsell, Engineer, on May 19, 1898, a Map or Plat of which Plan is of record in said Clerk's Office in Deed Book No. 92, at Page No. 496.

**Parcel Seventeen (Fourth Ward):** Parcel No. 410:

**First Parcel:** All of that certain lot or parcel of land fronting thirty- five (35) feet on the West side of Yoke Street and extending back therefrom with equal and uniform width to Sycamore Street, formerly known as College Avenue, and being part of Lot No. 9, Block A, as the same is laid down and designated on the Official Sales Map or Plat of University Place, a copy of which said Map or Plat is duly recorded in said Clerk's Office in Deed Book No. 270, at Page No. 549.

**Second Parcel:** Beginning at the Northeast corner of the above described lot, which corner is on the South side of said Yoke Street, and running thence with the Southern side of Yoke Street, a distance of ten (10) feet; thence with a line parallel with the First Parcel above described, a distance of forty-five (45) feet; thence with a line parallel with the first line in this description, a distance of ten (10) feet; thence with the Eastern line of the First Parcel herein described, a distance of forty-five (45) feet to the point and place of beginning.

**Third Parcel:** That portion of annulled Sycamore Street which vested in the Grantor by that certain Ordinance of the City of Morgantown adopted on July 19, 2005 and recorded in the aforesaid County Clerk's Office in Deed Book No. 292, at Page No. 1336.

And being the same tracts or parcels of real estate that were conveyed to The City of Morgantown, a municipal corporation, by McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by Deed dated the 1st day of November, 2007, and recorded in said Clerk's Office in Deed Book No. 1357, at Page No. 216.

**Parcel Eighteen (Fourth Ward):**

Beginning at a 1/2-inch by 30-inch iron rod (set) in the Northwesterly right-of-way line of University Avenue, standing as a new corner to the Board of Governors of West Virginia University (Deed Book No. 5, Page No. 144); thence leaving said University Avenue and with new lines of said Board of Governors, N. 25° 02' 30" W. 279.13 feet to a 1/2-inch by 30-inch iron rod (set); thence N. 51° 38' 58" W. 121.13 feet to a point in the Southern right-of-way line of Campus Drive where it interests the Southern right-of-way line of said University Avenue; thence leaving said Campus Drive and with the right-of-way line of said University Avenue, a curve to the right, having a radius of 35.00 feet, Southeasterly 29.40 feet along with curve through an angle of 48° 07' 59" to a point, said curve having a chord bearing and distance of S. 79° 30' 10" E. 28.55 feet; thence S. 55° 26' 11" E. 15.35 feet to a point; thence with a curve to the left, having a radius of 180.00 feet, Southeasterly 128.67 feet along said curve through an angle of 40° 57' 29" to a point, said curve having a chord bearing and distance of S. 75° 54' 55" E. 125.95 feet; thence N. 83° 36' 18" E. 90.82 feet to a point; thence with a curve to the right, having a radius of 70.00 feet Southeasterly 115.48 feet along said curve through an angle of 94° 31' 12" to a point, said curve having a chord bearing and distance of S. 49° 08' 06" E. 102.82 feet; thence S. 01° 52' 30" E. 28.95 feet to a point; thence with a curve to the right, having a radius of 60.00 feet Southwesterly 37.84 feet along said curve through an angle of 35° 47' 28" to a point; said curve having a chord bearing and distance of S. 16° 01' 14" W. 36.87 feet; thence S. 33° 54' 57" W. 183.89 feet to a point; thence with a curve to the left, having a radius of 200.00 feet Southwesterly 11.07 feet along said curve through an angle of 03° 10' 16" to the place of beginning, said curve having a chord bearing and distance of S. 32° 19' 50" W. 11.07 feet, containing 1.00 acres, more or less, as surveyed in January, 2004, by Triad Engineering, Inc., of Morgantown, West Virginia, and shown on a Plat of Survey for The City of Morgantown, Stadium Loop Tract #1, dated January 23, 2004.

**Parcel Nineteen (Fourth Ward, Tax Map 20, Parcel 400):**

Beginning at a 1/2-inch by 30-inch iron rod (set) in the Southerly right-of-way line of Stewart Street, standing as a corner to Michael Pinion deed Book No. 782, at Page No. 297), said road bears S. 73° 08' 53" W. 49.00 feet from a 1/2-inch iron rod (found), standing as a corner to C & S Rentals, Inc. and said Pinion; thence leaving said Stewart Street and with said Pinion S. 14° 17' 13" E. 109.13 feet to a 1 / 2-inch by 30-inch iron rod (set) in the Northern right-of-way line of University Avenue; thence leaving said Pinion and with said University Avenue S. 83° 36' 18" W. 46.33 feet to a point; then with a curve to the right, having a radius of 120.00 feet Northwesterly 68.65 feet along said curve through an angle of 32° 46' 36" to a point, said curve having a chord bearing and distance of N. 80° 00' 21" W 67.72 feet; thence with a curve to the right, having a radius of 30.00 feet Northwesterly 59.89 feet along said curve through an angle of 114° 22' 59" to a point in the Southerly right-of-way line of said Stewart Street, said curve having a chord bearing and distance of N. 06° 25' 33" W. 50.43 feet; thence with said Stewart Street N. 50° 45' 57" E. 8.37 feet to a point; thence with a curve to the right, having a radius of 230.14 feet Northeasterly 96.27 feet along said



curve through an angle of 23° 58' 03" to the place of beginning, said curve having a chord bearing and distance of N. 62° 44' 58" E. 95.57 feet, containing 0.23 acres, more or less, as surveyed in January, 2004, by Triad Engineering, Inc., of Morgantown, West Virginia, and shown on a plat of survey for The City of Morgantown, Stadium Loop Tract #2, dated January 26, 2004.

And being the same tract or parcel of real estate that was conveyed to The City of Morgantown, a municipal corporation, by West Virginia University Board of Governors, On Behalf Of West Virginia University, by Deed dated the 30th day of June, 2004, and recorded in said Clerk's Office in Deed Book No. 1285, at Page No. 67.

**Parcel Twenty:**

**LOT ONE (Fifth Ward Tax Map 20 Parcel 540):**

All of Lot No. 3 of Block A of the Cyrus K Fife Addition, as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

**LOT TWO: (Fifth Ward, Tax Map 20. Parcels 543 & 544):**

**Tract One:** All of Lot No. 6 of Block A as the same is laid down and designated upon the Official Sales Map or Plat of the Cyrus K. Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 496.

**Tract Two:** All of Lot No. 18 of Block A as the same is laid down and designated upon the Official Sales Map or Plat of the Fife Addition, a copy of which said Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288.

**LOT THREE: (Fifth Ward, Tax No. 20, Parcel 545):**

The Western one-half of Lot No. 12, Block A. as the same is laid down and designated upon the Official Sales Map or Plat of the Fife Addition a copy of which said Sales Map or Plat is recorded in said Clerk's Office in Deed Book No. 93, at Page No. 288, and being part of the same real estate that was conveyed to McCoy 6, a West Virginia general partnership, by the West Virginia University Foundation, Inc. by Deed dated the 18<sup>th</sup> day of February, 1992, and recorded in said Clerk's Office in Deed Book No: 1044, at Page No. 66.

And being part of the same real property conveyed to The City of Morgantown by McCoy 6 Apartments Limited Liability Company by Deed dated the 20<sup>th</sup> day of December, 2004, and recorded in said Clerk's Office in Deed Book No. 1285, at Page No. 39.