

March 9, 2015

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,

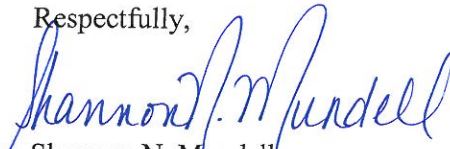
Pursuant to West Virginia Code § 18B-19-13 and appended for your review, please find a copy of the following documents: i) that certain Real Estate Exchange and Development Agreement, dated February 6, 2015, between WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA UNIVERSITY (“University”) and AMERICAN CAMPUS COMMUNITIES OPERATING PARTNERSHIP, a Maryland limited partnership (“ACC”) and ii) 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 Agreement, WVU agrees to acquire from ACC that certain part of Parcel 4, Tax Map 14-A, containing approximately 0.11 acres, located in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia. In exchange, ACC has agreed to acquire from WVU that certain real property consisting of Parcels 201, 202, 203, 204, 205, 206, 207, and 208, of Tax Map 20, in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, together with all improvements, easements, appurtenances and rights relating thereto. WVU intends to purchase the real property to operate, and maintain a parking garage that will provide vehicular parking for the residents of University Place, as well as visitors to the commercial space contained therein.

Pursuant to West Virginia Code Section 18B-19-13(c), the attached agreement 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,


Shannon N. Mundell
Director of Real Estate



March 9, 2015

Dr. Paul Hill
Chancellor
West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

Re: Pursuant to West Virginia Code §18B-19-13, West Virginia University notification to Joint Committee on Government & Finance

Dear Chancellor Hill:

Pursuant to West Virginia Code Section 18B-19-13(g), appended please find a copy of West Virginia University's report submitted to the Joint Committee on Government and Finance regarding the proposed acquisition.

If you have any questions or concerns regarding the above, please call me at 304.293.0394.

Respectfully,
West Virginia University

A handwritten signature in blue ink that reads 'Shannon N. Mundell'.

Shannon N. Mundell
Director of Real Estate

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 Real Estate Exchange and Development Agreement dated February 6, 2015, AMERICAN CAMPUS COMMUNITIES OPERATING PARTNERSHIP, LP, a Maryland limited partnership, (“ACC”) agrees to convey to WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA UNIVERSITY, an agency and higher education institution of the State of West Virginia, (“WVU”) that certain real property located and situate in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, consisting of approximately 0.11 acres, more or less, and being a part of Parcel 4 of Tax Map 14-A. In exchange, WVU has agreed to convey to ACC that certain real property (“Exchange Property”) located and situate in Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, consisting of approximately 0.51 acres, more or less, and being parcels 201, 202, 203, 204, 205, 206, 207 and 208, of Tax Map 20.

WVU intends to acquire the real property for the following express purpose:

To operate, and maintain a parking garage facility that will provide vehicular parking for residents of WVU’s University Place, visitors to the retail space contained therein, as well as the general public.

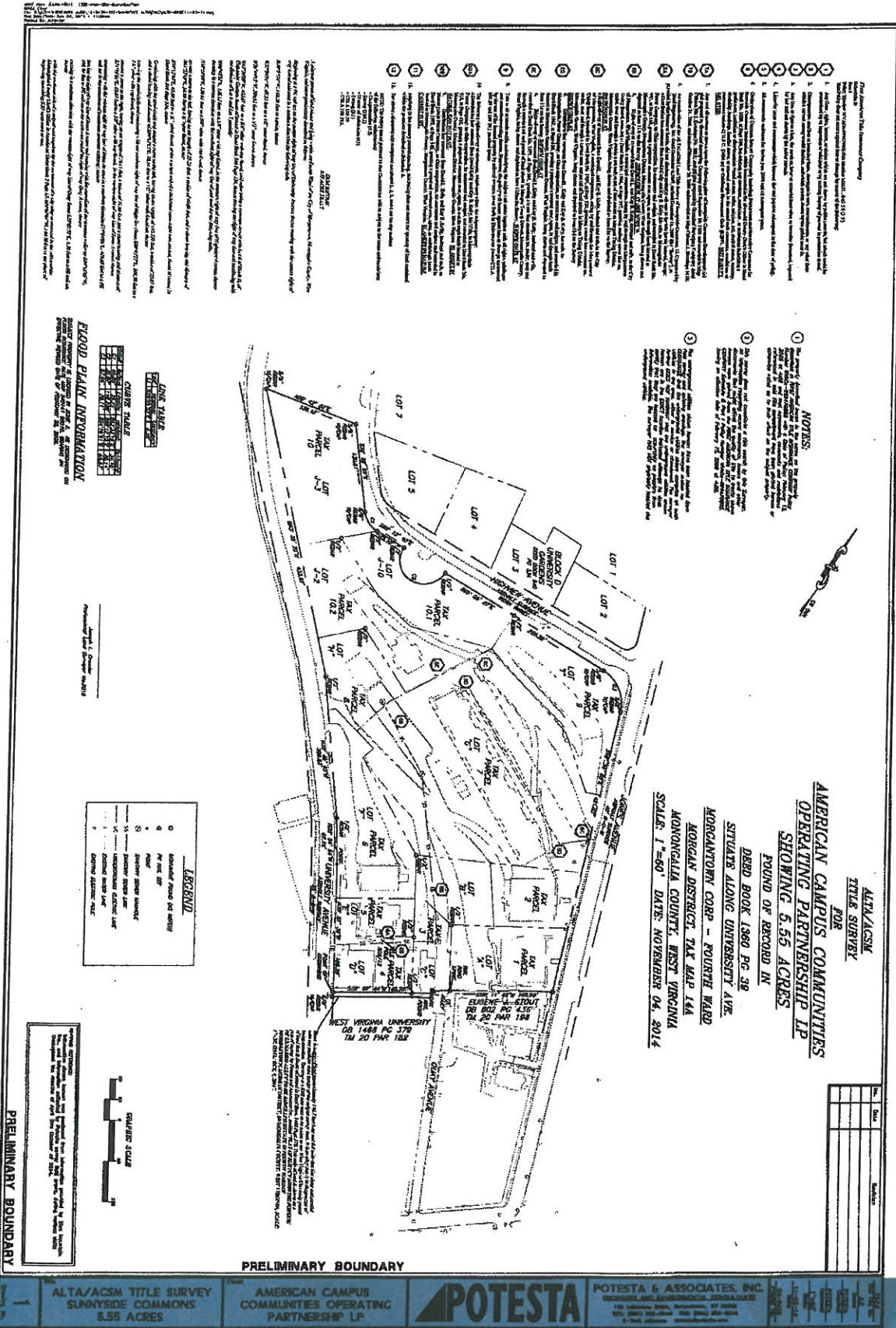
This acquisition has been approved by the West Virginia University Board of Governors, and the closing of such sale shall occur at a mutually agreeable time and place in the City of Morgantown, West Virginia not later than thirty one (31) days following Purchaser’s submission of this Contract and other required information to the Joint Committee on Government and Finance, pursuant to W. Va. Code § 18B-19-13(a) through (c). Neither ACC nor WVU have engaged any real estate broker, finder, or agent in connection with this transaction.

The property is more particularly designated as the following:

A tract of land, situate along University Avenue, in Fourth Ward of Morgantown, Monongalia County, West Virginia, more particularly described as follows:

Beginning at a P-K nail set on the northeastern right of way line of University Avenue, at the common corner between American Campus Communities Operating Partnership, LP, recorded in Deed Book 1360 at page 9, and the West Virginia University Board of Governors recorded in deed Book 1468 at page 379, thence running with the right of way line of said University Avenue N 30°57’38” W, 62.55 feet to a P-K nail set, thence leaving said University Avenue and running through and across the property of said American Campus Communities Operating Partnership, LP, from which this conveyance is a part of around a curve to the left, having an arc length of 11.73 feet, a radius of 13.00 feet, and a chord bearing and distance of N86°59’53” E, 11.34 feet to a point, thence N61°08’25” E, 9.86 feet to a point, thence around a curve to the right, having an arc length of 26.35 feet, a radius of 56.00 feet, and a chord bearing and distance of S74°37’12” W, 26.11 feet to a point, thence N58°57’41” E, 51.19 feet to a 5/8 inch rebar with plastic cap set, thence S30°52’12” E, 50.09 feet to a 5/8 inch rebar with plastic cap set in the common division line of said West Virginia University Board of Governors, from which a ½ inch rebar found bears N59°07’48” E at 15.74 feet, thence with said division line S59°07’48” W, 96.13 feet to the point of beginning, containing 0.11 acres, more or less.

Exhibit A



Copy for exhibit purposes only

REAL ESTATE EXCHANGE AND DEVELOPMENT AGREEMENT

THIS REAL ESTATE EXCHANGE AND DEVELOPMENT AGREEMENT ("Agreement") is made this 10th day of February, 2015, by and between WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA UNIVERSITY, an agency and higher education institution of the State of West Virginia ("University"), and AMERICAN CAMPUS COMMUNITIES OPERATING PARTNERSHIP LP, a Maryland limited partnership ("ACC") (the University and ACC are sometimes hereinafter collectively referred to as "Parties" and individually as a "Party").

WHEREAS, ACC is the owner of certain real property located in Morgantown, Monongalia County, West Virginia, adjacent to the University's downtown campus contiguous to the Parking Garage Property (as hereinafter defined) being utilized by the University for construction of a parking garage as part of the University's "University Place" student housing project, more particularly described on Exhibit A attached hereto and made a part hereof (the "ACC Property");

WHEREAS, the University is the owner of certain real property located in Morgantown, Monongalia County, West Virginia described as the "University Exchange Parcel" in Section 1;

WHEREAS, ACC and the University desire to exchange (the "Exchange") the ACC Exchange Parcel (being a portion of the ACC Property and as further described in Section 1) and the University Exchange Parcel (the ACC Exchange Parcel and the University Exchange Parcel are sometimes hereinafter collectively referred to as "Parcels" and individually as a "Parcel") for the consideration recited and subject to the terms and conditions set forth in this Agreement;

WHEREAS, the University is the owner of certain real property located in Morgantown, Monongalia County, West Virginia, more particularly depicted as Tract No. 2 Part B on Exhibit B attached hereto and made a part hereof (the "Parking Garage Property");

WHEREAS, the University intends to use the ACC Exchange Parcel for construction of entry drive improvements for use as a means of ingress, egress to and from University Avenue and the Parking Garage (as hereinafter defined);

WHEREAS, in connection with the Exchange, the University has agreed to cause to be constructed by Downtown Campus Parking Associates, LLC, a West Virginia limited liability company ("D CPA") surface parking improvements consisting of forty-one (41) parking spaces (the "Parking Improvements") on the University Exchange Parcel;

WHEREAS, the University and WV Campus Housing, LLC, a West Virginia limited liability company ("WVCH") have entered into that certain Lease and Development Agreement dated as of October 26, 2012, as subsequently amended (the "Lease and Development Agreement"), which grants WVCH all leasehold rights to the Parking Garage Property and which requires WVCH to design, develop, finance, construct, and operate, and take all other necessary actions for the construction and completion of certain parking garage facilities on the Parking Garage Property (the "Parking Garage") and related parking facilities projects;

WHEREAS, WVCH and DCPA, with the express written consent of the University, have entered into that certain Parking Facilities Sublease, Delegation and Assumption Agreement of Duties, and Development Agreement dated as of October 9, 2014 (the "Delegation Agreement"), by which WVCH delegated its obligations and duties respecting the design, development, financing, construction and operation of the Parking Garage and related parking facilities projects;

WHEREAS, DCPA and the University and have entered into that certain Parking Facilities Sublease Agreement dated as of October 9, 2014 (the "Parking Garage Ground Lease"), which provides for the subleasing of the Parking Garage and related parking facilities projects by DCPA to the University;

WHEREAS, in connection with the Exchange, the University has agreed to grant and convey to ACC, for the benefit of and as an appurtenance to the ACC Property (inclusive of the University Exchange Parcel following consummation of the Exchange) a sublease for a period of twenty (20) years for approximately twenty (20) designated vehicle parking spaces in the Parking Garage for the parking of motor vehicles by ACC, its successors, assigns, transferees, tenants, subtenants, licensees or occupants of ACC and/or the ACC Property (the "Dedicated Parking Spaces");

WHEREAS, in connection with the Exchange, ACC has agreed to grant and convey to DCPA and its assigns, licensees, contractors or subcontractors a temporary, non-exclusive construction easement (the "Temporary Garage Construction Easement") on, over and across the portion of the ACC Property described on Exhibit C attached hereto and made a part hereof (the "Construction Easement Area") for the sole purposes of (a) demolishing and removing, at DCPA's sole cost and expense, the existing buildings, sidewalks, drives and parking areas on the Construction Easement Area (the "Demolition Work"), which Demolition Work shall be performed in accordance with the plans described in Exhibit D attached hereto and made a part hereof (the "Plans") and (b) excavation, site work and construction of retaining walls, foundations and improvements for the Parking Garage, at DCPA's sole cost and expense (the "Construction Work") and, together with the Demolition Work, the "Work"), which Construction Work shall be performed in accordance with the Plans, and construction storage, staging and placing a construction trailer in connection with the Work;

WHEREAS, in connection with the Exchange, ACC has agreed to grant and convey to DCPA and its assigns, licensees, contractors or subcontractors a temporary, non-exclusive construction easement (the "Temporary Surface Parking Construction Easement") on, over and across the University Exchange Parcel to be acquired by ACC pursuant to the Exchange for the sole purposes of the installation and construction of the Parking Improvements;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. ACC EXCHANGE PARCEL AND UNIVERSITY EXCHANGE PARCEL.

1.1 ACC Exchange Parcel. Subject to the terms and conditions hereof, ACC hereby agrees to exchange, convey and assign to the University, and the University hereby agrees to accept from ACC, the ACC Exchange Parcel. The "ACC Exchange Parcel" is located in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, more particularly described on Exhibit E attached hereto and made a part hereof, and is further identified as follows:

Parcel(s) 4 of Tax Map 14-A.

Being part of the same real estate conveyed to ACC by deed dated February 15, 2008, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1360, at Page 39.

1.2 University Exchange Parcel. Subject to the terms and conditions hereof, the University hereby agrees to exchange, convey and assign to ACC, and ACC hereby agrees to accept from the University, the University Exchange Parcel. The "University Exchange Parcel" is located in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, more particularly depicted as Tract No. 2 Part A on Exhibit F attached hereto and made a part hereof, and is further identified as follows:

Parcels 201, 202, 203, 204, 205, 206, 207, and 208 of Tax Map 20

Being part of the same real estate conveyed to the University by deed dated October 26, 2012, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1468, at Page 379.

2. VALUATION & CONSIDERATION.

2.1 Valuation. The Parties agree that the value of the University Exchange Parcel for purposes of this Agreement shall be determined by averaging the values of two (2) appraisals to be obtained from independent licensed appraisers in accordance with the requirements of W. Va. Code § 18B-19-10(a)(1) through (4).

2.2 Consideration. University and ACC agree that this Exchange of the ACC Exchange Property and the University Exchange Property is an even exchange; accordingly, no additional monetary consideration will be paid by either Party to the other with respect solely to the Exchange.

3. TITLE AND SURVEY.

3.1 Title Company. The ACC Title Company (herein so called) shall be Heritage Title Company of Austin, Inc., whose address is 401 Congress Avenue, Suite 1500, Austin, TX 78701, Attention: Amy Love Fisher. University may elect to choose its own title company upon election to obtain a Title Commitment and Owner's Policy of Title Insurance.

3.2 Title Commitment and Survey. Contemporaneously with the execution of this Agreement, both the University and ACC agree that each may, at their respective sole cost

and expense, obtain a current form ALTA Commitment for Owner Policy of Title Insurance covering the applicable property to be ultimately acquired by the University or ACC, as applicable (hereinafter referred to as a "Title Commitment"), issued by their respective Title Company, legible copies of all instruments shown as exceptions in the Title Commitment and any survey which either Party might, at their respective sole cost and expense, wish to obtain with respect to the Parcel to be acquired by such Party pursuant to the terms and provisions of this Agreement. Alternatively, both the University and ACC may have the title to the applicable property to be ultimately acquired by the University or ACC, as applicable, examined by legal counsel of its choosing. The Parties agree that each shall have until 5:00 p.m., local Morgantown, West Virginia time on February 28, 2015 (the "Review Period") in which to review such Title Commitments and surveys with respect to the Parcel to be acquired by such Party. The failure of the University and/or ACC to terminate this Agreement prior to the expiration of the Review Period (as hereinafter defined) shall be deemed to constitute such Party's acceptance of any exceptions to title appearing in the Title Commitment or disclosed in the examination as same may have been amended up to and including the end of the Review Period (which items shall then be deemed to constitute "Permitted Exceptions") with respect to the University Exchange Parcel and ACC Exchange Parcel, as applicable. In the event either Party elects to not obtain a Title Commitment covering the applicable property to be ultimately acquired by such Party, the term "Permitted Exceptions" with respect to such property shall be deemed to mean all liens, restrictions, covenants, easements and other matters in existence, affecting title to the property and of record in Monongalia County, West Virginia or that could be ascertained by an inspection of the property or that may be asserted by persons in possession of the property, easements, liens or encumbrances, or claims thereof, not shown by the public records, and any encroachment, encumbrance, violation, variation or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the property and not shown by the public records. Notwithstanding the foregoing, however, (a) the term "Permitted Exceptions" with respect to the ACC Exchange Parcel shall not include that certain Sunnyside Commons Sub-Division Covenants and Agreements (the "Covenants") recorded in the Office of the Clerk of the County Commission of Monongalia County (the "Records") at Deed Book 1020, Page 540, and ACC shall cause such instrument to be terminated in its entirety of record prior to Closing and (b) the term "Permitted Exceptions" with respect to the WVU Exchange Parcel shall not include (a) that certain Memorandum of Lease recorded in the Records at Deed Book 1473, Page 689, (b) that certain First Amendment to Memorandum of Lease recorded in the Records at Deed Book 1474, Page 854, (c) that certain Assignment of Lease, Contracts and Agreements recorded in the Records at Assignment Book 118, Page 220, (d) those certain Subordination, Non-Disturbance and Attornment Agreements recorded in the Records in Assignment Book 123, Page 636 and Assignment Book 123, Page 654, and (e) any other documents evidencing, governing or securing any lease of the WVU Exchange Parcel to WV Campus Housing, LLC, Downtown Campus Parking Associates, LLC, Paradigm Development Group, LLC or any other party or any indebtedness of the University, WVU Campus Housing, LLC, Downtown Campus Parking Associates, LLC, Paradigm Development Group, LLC or any other party.

4. CONDITION OF PROPERTY.

4.1 Due Diligence. ACC and the University agree that ACC has made all inspections or investigations desired by ACC with respect to the University Exchange Parcel or any portion thereof and the University has made all inspections or investigations desired by the University with respect to the ACC Exchange Parcel. In that regard, the University, through its authorized agents or representatives, shall be entitled to enter upon the ACC Exchange Parcel at all reasonable times prior to the expiration of the Review Period, upon reasonable prior notice to ACC.

4.2 Condition of Property.

4.2.1 BOTH THE UNIVERSITY AND ACC ACKNOWLEDGE AND AGREE THAT IT IS EXPERIENCED IN ACQUIRING, OWNING, DEVELOPING, MARKETING, LEASING, OPERATING, MANAGING AND SELLING OF PROPERTIES SIMILAR TO THE APPLICABLE PARCEL TO BE ULTIMATELY ACQUIRED BY THE UNIVERSITY OR ACC, AS APPLICABLE, AND THAT EACH HAS INSPECTED, TESTED, STUDIED, REVIEWED AND INVESTIGATED ALL ASPECTS OF THE PROPERTY TO BE ULTIMATELY ACQUIRED BY IT. BOTH THE UNIVERSITY AND ACC FURTHER ACKNOWLEDGE AND AGREE THAT EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, THE OTHER PARTY HAS NOT MADE, DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS MAKING ANY PROMISE, COVENANT, AGREEMENT, WARRANTY, GUARANTY OR REPRESENTATION, OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING BY OPERATION OF LAW, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING THE PARCEL TO BE CONVEYED BY SUCH PARTY, INCLUDING, WITHOUT LIMITATION, (I) THE PHYSICAL AND ENVIRONMENTAL NATURE AND CONDITION OF THE PARCEL, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PARCEL FOR ANY AND ALL ACTIVITIES AND USES WHICH THE ACQUIRING PARTY MAY ELECT TO CONDUCT THEREON, AND THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS SUBSTANCES) OR THE COMPLIANCE OF THE PARCEL WITH ANY AND ALL APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (II) EXCEPT FOR ANY WARRANTIES CONTAINED IN THE DOCUMENTS TO BE DELIVERED BY SUCH PARTY AT CLOSING, THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHER MATTER AFFECTING TITLE; (III) THE COMPLIANCE OF THE PARCEL OR ITS OPERATION WITH ANY LAWS, STATUTES, ORDINANCES, RULES, REQUIREMENTS OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY, INCLUDING, BUT NOT LIMITED TO, THE EXISTENCE OR STATUS OF ANY AND ALL ENTITLEMENTS; (IV) THE INCOME, ECONOMIC VIABILITY OR MARKETABILITY OF THE PARCEL; (V) TAX MATTERS PERTAINING TO THE TRANSACTION CONTEMPLATED HEREBY; (VI) THE ACCURACY OR COMPLETENESS OF ANY REPORTS OR OTHER INFORMATION FURNISHED BY SUCH PARTY TO THE OTHER PARTY WITH RESPECT TO THE PARCEL AND ENGINEERING, ENVIRONMENTAL OR OTHER REPORTS, STUDIES OR INVESTIGATIONS, IF ANY; (VII) ZONING; (VIII) VALUATION; (IX) HABITABILITY; (X) MERCHANTABILITY; (XI) SUITABILITY OR FITNESS FOR A

PARTICULAR PURPOSE; OR (XII) ANY OTHER MATTER WITH RESPECT TO THE PARCEL. BOTH THE UNIVERSITY AND ACC FURTHER ACKNOWLEDGE AND AGREE THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PARCEL TO BE ULTIMATELY ACQUIRED BY IT, AND THAT IT IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PARCEL AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE OTHER PARTY WITH RESPECT TO THE PARCEL IN MAKING ITS DECISION TO ACQUIRE THE PARCEL. FURTHER, BOTH UNIVERSITY AND ACC HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE EXCHANGE OF THE PARCELS, AS PROVIDED FOR HEREIN, IS BEING MADE ON AN "AS IS" BASIS, "WITH ALL FAULTS," AND UPON CLOSING, EACH PARTY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY EXIST WITH RESPECT TO THE PARCEL ACQUIRED BY SUCH PARTY AND WITH FULL KNOWLEDGE AND ACCEPTANCE BY SUCH PARTY OF ALL INFORMATION AND MATTERS DISCLOSED IN ANY AND ALL REPORTS, STUDIES, ASSESSMENTS, INVESTIGATIONS, PROPOSALS AND DOCUMENTS FURNISHED TO, OR OBTAINED BY, SUCH PARTY WITH RESPECT TO THE PARCEL. FURTHER, BOTH THE UNIVERSITY AND ACC ACKNOWLEDGE AND AGREE THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS COLLATERAL TO OR AFFECTING THE TRANSACTION CONTEMPLATED HEREBY WHICH HAVE BEEN MADE BY THE OTHER PARTY OR ANY THIRD PARTY.

4.2.2 IN THE EVENT THAT FROM AND AFTER CLOSING ANY INVESTIGATION, REMOVAL, ABATEMENT, REMEDIATION, OR OTHER CORRECTIVE ACTION IS AT ANY TIME REQUIRED IN CONNECTION WITH A PARCEL OR ANY ADJACENT OR NEARBY PROPERTY AS A RESULT OF THE PRESENCE OF ANY ENVIRONMENTAL PROBLEMS, HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, OR ENVIRONMENTAL CONTAMINATION AT OR ON A PARCEL OR EMANATING FROM A PARCEL TO ANY ADJACENT OR NEARBY PROPERTY, INCLUDING, WITHOUT LIMITATION, ASBESTOS AND PETROLEUM PRODUCTS AND BYPRODUCTS AND ANY CONSTITUENTS THEREOF, REGARDLESS OF WHEN SAME OCCURRED, THE PARTY ACQUIRING SUCH PARCEL ACKNOWLEDGES AND AGREES THAT: (A) ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION SHALL BE PERFORMED BY SUCH ACQUIRING PARTY AND AT ACQUIRING PARTY'S SOLE COST AND EXPENSE; AND (B) THE CONVEYING PARTY HAS NO DUTY OR OBLIGATION TO THE ACQUIRING PARTY TO PERFORM OR CAUSE TO BE PERFORMED ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION. BOTH UNIVERSITY AND ACC FURTHER ACKNOWLEDGE AND AGREE THAT, EFFECTIVE UPON CLOSING, SUCH PARTY, FOR ITSELF, AND ITS SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES AND RELEASES THE OTHER PARTY FROM AND RELINQUISHES ANY AND ALL CLAIMS OR RIGHTS OF CONTRIBUTION (INCLUDING ANY RIGHT TO CONTRIBUTION UNDER 42 U.S.C. §9613(F)) WHICH SUCH PARTY OR ITS SUCCESSORS, LEGAL REPRESENTATIVES OR ASSIGNS NOW HAS OR MAY HAVE AGAINST THE CONVEYING PARTY, ITS PARTNERS, PRINCIPALS, AFFILIATES, AGENTS OR ANY OF ITS EMPLOYEES OR

AGENTS BY REASON OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCE (INCLUDING, BUT NOT LIMITED TO, ASBESTOS AND PETROLEUM PRODUCTS AND BYPRODUCTS AND THE CONSTITUENTS THEREOF) OR ANY OTHER ADVERSE ENVIRONMENTAL CONDITION, DEFECT, OR PROBLEM WITH RESPECT TO THE PARCEL ACQUIRED BY SUCH PARTY (WHETHER SUCH CONDITION, DEFECT, OR CONDITION BE KNOWN OR UNKNOWN, LATENT OR PATENT, OR WHETHER OR NOT ANY INVESTIGATION, REMEDIATION, OR CORRECTIVE ACTION MAY BE REQUIRED OR DESIRABLE WITH RESPECT TO THE PARCEL).

4.2.3 WITHOUT LIMITING THE FOREGOING PROVISIONS, EFFECTIVE UPON CLOSING, BOTH THE UNIVERSITY AND ACC HEREBY UNCONDITIONALLY AND IRREVOCABLY RELEASE THE OTHER PARTY FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) ARISING FROM OR RELATED TO THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PARCEL ACQUIRED BY SUCH RELEASING PARTY. THE RELEASE SET FORTH IN THIS SECTION 4.2.3 SPECIFICALLY INCLUDES ANY CLAIMS UNDER ANY ENVIRONMENTAL LAWS. "ENVIRONMENTAL LAWS" INCLUDES, BUT IS NOT LIMITED TO, THE RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. 6901, ET SEQ.), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED BY THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (42 U.S.C. 9601, ET SEQ.) ("CERCLA"); THE CLEAN AIR ACT (42 U.S.C. 4701, ET SEQ.); THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (42 U.S.C. §1101, ET SEQ.); THE HAZARDOUS MATERIALS TRANSPORTATION ACT OF 1974 (49 U.S.C. §1801, ET SEQ.); THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. §1251, ET SEQ.); THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (7 U.S.C. §137, ET SEQ.) ("FIFRA"); THE SAFE DRINKING WATER ACT (42 U.S.C. §3001, ET SEQ.); AND THE TOXIC SUBSTANCE CONTROL ACT (15 U.S.C. §2601, ET SEQ.) ("TSCA"), AS ANY OF THE SAME MAY BE AMENDED FROM TIME TO TIME, AND ANY COMPARABLE OR SUCCESSOR PROVISIONS OF FEDERAL, STATE OR LOCAL LAW, AND ANY REGULATIONS, ORDERS, RULES, PROCEDURES, GUIDELINES AND THE LIKE PROMULGATED IN CONNECTION THEREWITH. THE TERMS "HAZARDOUS SUBSTANCES AND HAZARDOUS MATERIALS" SHALL INCLUDE, WITHOUT LIMITATION, ANY HAZARDOUS SUBSTANCE, POLLUTANT, OR CONTAMINANT REGULATED UNDER CERCLA; OIL AND PETROLEUM PRODUCTS AND NATURAL GAS, NATURAL GAS LIQUIDS, LIQUEFIED NATURAL GAS, AND SYNTHETIC GAS USABLE FOR FUEL; PESTICIDES REGULATED UNDER FIFRA; ASBESTOS, POLYCHLORINATED BIPHENYLS, AND OTHER SUBSTANCES REGULATED UNDER TSCA; SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, AND BY-PRODUCT MATERIALS REGULATED UNDER THE ATOMIC ENERGY ACT; AND INDUSTRIAL PROCESS AND POLLUTION CONTROL WASTES TO THE EXTENT REGULATED UNDER APPLICABLE ENVIRONMENTAL LAWS.

4.2.4 THE DISCLAIMERS AND RELEASES SET FORTH IN THIS SECTION 4.2 SHALL EXPRESSLY SURVIVE THE CLOSING (AND SHALL NOT MERGE

THEREIN OR INTO ANY DOCUMENTS EXECUTED IN CONNECTION THEREWITH) OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

5. CLOSING AND DEED.

5.1 Closing Date. Unless otherwise mutually agreed upon in writing, the Exchange shall be completed and all necessary legal documents or instruments executed and delivered (the "Closing") on or before April 30, 2015 (the "Closing Date").

5.2 Closing. The Parties may effect Closing by delivery of all requisite documents and funds to the Title Company with appropriate instructions for delivery and disbursement thereof on or before Closing Date.

5.3 University to Deliver. At Closing, the University shall furnish and deliver to the Title Company for delivery to ACC, at the University's expense, the following:

5.3.1 A special warranty deed (the "University Deed") dated as of the Closing Date in form and substance reasonably acceptable to ACC and the University, conveying good and indefeasible title to the University Exchange Parcel, subject only to the Permitted Exceptions applicable to the University Exchange Parcel;

5.3.2 Possession of the University Exchange Parcel, subject only to the Permitted Exceptions applicable thereto;

5.3.3 A certificate in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying as to the non-foreign status of the University;

5.3.4 The Dedicated Spaces Parking Lease (as hereinafter defined) and Escrow Agreement (as hereinafter defined);

5.3.5 The consent of DCPA and WVCH to the Dedicated Spaces Parking Lease and their agreement that in the event of the termination of the Parking Garage Sublease Agreement or Delegation Agreement, as applicable, by reentry, notice, conditional limitation, surrender, summary proceeding or other action or proceeding, or otherwise, or, if the Parking Garage Sublease Agreement or Delegation Agreement, as applicable, shall terminate for any reason (including expiration of the term) before the date provided in the Dedicated Spaces Parking Lease for the termination of the term of the Dedicated Spaces Parking Lease, the tenant under the Dedicated Spaces Parking Lease shall not be made a party in any removal or eviction action or proceeding (unless required to do so in order to commence and/or continue any such proceeding), nor shall the tenant be evicted or removed of its possession or its right of possession be disturbed or in any way interfered with, and the Dedicated Spaces Parking Lease shall continue in full force and effect as a direct lease from DCPA or WVCH, as applicable, to the tenant.

5.3.6 The consent in writing of Bank of America, N.A., the holder of a lien against WVCH's interest in the Parking Garage Property, to the Dedicated Spaces Parking Lease, its agreement to subordinate its lien to the Dedicated Spaces Parking Lease, and its agreement that in the event of a foreclosure of the lien (or deed in lieu thereof), the Dedicated Spaces Parking Lease will remain in full force and effect and shall not be extinguished by such foreclosure.

5.3.7 Evidence of the authority of the University and the person(s) executing and delivering closing documents on its behalf to consummate the Closing, in form and content reasonably acceptable to the Title Company and ACC; and

5.3.8 Such other items, instruments and documents as are reasonably appropriate, necessary and/or required by the Title Company to consummate the transactions contemplated hereby, including the release of the lease and leasehold financing currently encumbering the University Exchange Parcel.

5.4 ACC to Deliver. At Closing, ACC shall furnish and deliver to the Title Company for delivery to the University, at ACC's expense, the following:

5.4.1 A special warranty deed (the "ACC Deed") dated as of the Closing Date in form and substance reasonably acceptable to the University and ACC, conveying good and indefeasible title to the ACC Exchange Parcel, subject only to the Permitted Exceptions applicable to the ACC Exchange Parcel;

5.4.2 Possession of the ACC Exchange Parcel, subject only to the Permitted Exceptions applicable thereto;

5.4.3 A certificate in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying as to the non-foreign status of ACC;

5.4.4 The Dedicated Spaces Parking Lease, Escrow Agreement and Easement Agreement;

5.4.5 Provided that the City Council of the City of Morgantown, West Virginia has theretofore approved by final hearing the annulment of an unnamed alley (6.83' wide right of way) containing 0.02 acre, more or less, all as more particularly set forth on the Plat of Survey Showing Portion of Unnamed Alley to be Annulled dated January 15, 2015 prepared by Potesta & Associates, Inc., a quitclaim deed dated as of the Closing Date in form and substance reasonably acceptable to the University and ACC, quitclaiming to the University ACC's right, title and interest in and to that portion of the alley abutting and sharing a common boundary with the ACC Exchange Parcel (and ACC shall retain its right, title and interest in and to that portion of the alley abutting and sharing a common boundary with the remainder of the ACC Property);

5.4.6 Evidence of the authority of ACC and the person(s) executing and delivering closing documents on its behalf to consummate the Closing, in form and content reasonably acceptable to the Title Company and the University; and

5.4.7 Such other items, instruments and documents as are reasonably appropriate, necessary and/or required by the Title Company to consummate the transactions contemplated hereby, including, a termination of the Covenants.

5.5 The parties agree that initial drafts of the University Deed, ACC Deed, Dedicated Spaces Parking Lease, Escrow Agreement and Easement shall be prepared by ACC and submitted to the University at least ten (10) business days in advance of the Closing for review and approval.

5.6 The University is an agency of the State of West Virginia; therefore, the University Deed and ACC Deed shall include the following as the declaration of consideration or value:

Under the penalties of fine and imprisonment as provided by law, the undersigned hereby declares that the transfer involved in the document to which this Declaration is appended is a transfer to or from the State of West Virginia, or to or from any of its instrumentalities, agencies or political subdivisions, and therefore is not subject to West Virginia excise tax and is exempt under the provisions of Chapter 11, Article 22, Section 1 of the West Virginia Code, 1931, as amended.

5.7 With respect to the University Exchange Parcel, the University agrees to pay for preparation of the University Deed; the cost of clearing any liens or encumbrances affecting the University Exchange Parcel; any local, county or state transfer or recording or documentary stamp tax assessed in connection with the transfer; recordation of any releases executed by any and all creditors, if any; and other charges typically paid by sellers in transactions of this nature in the county in which the University Exchange Parcel is located.

5.8 With respect to the ACC Exchange Parcel, ACC agrees to pay for preparation of the ACC Deed; the cost of clearing any liens or encumbrances affecting the ACC Exchange Parcel; any local, county or state transfer or recording or documentary stamp tax assessed in connection with the transfer; recordation of any releases executed by any and all creditors, if any; and other charges typically paid by sellers in transactions of this nature in the county in which the ACC Exchange Parcel is located.

5.9 In addition to the foregoing, each Party shall pay the cost of the issuance of any Owner Policy of Title Insurance desired to be obtained by such Party in connection with the transactions contemplated by this Agreement. Each Party shall pay its own attorneys' fees.

6. CONTINGENCIES. The following shall be conditions precedent to the obligations of the University to consummate this Agreement, the failure of which shall permit the University to exercise the remedies set forth below:

6.1 The University having fulfilled its obligations with respect to W. Va. Code § 18B-19-10(a)(1) through (3).

6.2 In the event that the University Exchange Parcel is valued at greater than \$1 million, the University having fulfilled its obligations with respect to W. Va. Code § 18B-19-13.

If any such conditions precedent are not satisfied on or before three (3) business days' prior to the Closing Date (as the Closing Date may be extended to such later date and time that is agreeable to the University and ACC), the University shall be entitled to terminate this Agreement by written notice to ACC on or before three (3) business days' prior to the Closing Date, whereupon the University and ACC shall have no obligations hereunder, except with respect to any such obligations that expressly survive the termination hereof. In the event the University fails to terminate this Agreement by written notice to ACC on or before three (3) business days prior to the Closing Date, the University shall constitute the University's waiver of its right to terminate this Agreement pursuant to this Section 6.

7. TAXES AND ASSESSMENTS. University, as a state agency, is exempt from taxation; therefore, ACC, with respect to the ACC Exchange Parcel, agrees to pay:

7.1 All real and personal property taxes that may be due and payable for the current and all prior tax years, as assessed by the applicable County Assessor and to be collected by the applicable County Sheriff. ACC agrees to provide proof of payment to the University on or before Closing. ACC agrees to escrow sufficient funds to be held by the Title Company, for the sole purpose of paying in a timely manner real estate taxes for the ACC Exchange Parcel assessed in the name of the ACC (or its predecessor in title) for the 2015 tax year. To the extent that excess funds are escrowed and are not used to pay taxes, the funds shall be reimbursed to ACC pursuant to the terms of a formal escrow agreement (the "Escrow Agreement") in form mutually acceptable for the University and ACC to be executed and delivered by the University and ACC at Closing.

7.2 Any and all other state, county, or municipal assessments (including Fire Services Fees) that shall be due and payable for all current and prior years, as assessed and determined by the applicable authority.

8. PARKING IMPROVEMENTS, DEDICATED SPACES PARKING LEASE AND EASEMENT.

8.1 Parking Improvements.

8.1.1 The University shall cause to be constructed by DCPA the Parking Improvements (as depicted in Exhibit G attached hereto and made a part hereof) in a good and workmanlike manner, and, at ACC's request, substantially in accordance, where applicable, with the City of Morgantown Planning and Zoning Code (the "Surface Parking Plans") and all applicable governmental requirements. The agreement of the University

contained in this Section 8.1 shall expressly survive the Closing of this Agreement. In connection therewith, the University agrees that the University shall cause DCPA to do the following:

8.1.1.1 Obtain all approvals required from all governmental authorities for construction of the Parking Improvements;

8.1.1.2 Cause the ACC to be provided with copies of all performance, maintenance and other bonds, if any, required in connection with construction of the Parking Improvements;

8.1.1.3 Cause such bonds to remain in full force and effect during the entire term of construction of the Parking Improvements;

8.1.1.4 Provide ACC, within two (2) business days following receipt, with copies of any and all correspondence between the University and DCPA regarding the Parking Improvements; and

8.1.2 The University shall cause DCPA to commence construction of the Parking Improvements on or before February 15, 2015 and diligently pursue same to completion on or before September 15, 2015.

8.1.3 The University shall cause DCPA to pay all hard and soft costs and expenses for and relating to the construction of the Parking Improvements in accordance with the Surface Parking Plans and the requirements of all governmental authorities.

8.1.4 The University will cause all warranties issued in connection with the construction of the Parking Improvements to be issued jointly in the name of ACC, DCPA and the University and shall cooperate with ACC in the enforcement thereof.

8.2 Dedicated Spaces Parking Lease. At the Closing, the University shall lease the Dedicated Parking Spaces in the University's subleased premises in the Parking Garage on the Parking Garage Property pursuant to the Parking Garage Sublease Agreement (the "Dedicated Spaces Parking Lease") in form and upon the terms and provisions mutually acceptable to the University and ACC. The Dedicated Spaces Parking Lease will provide, in part, as follows:

8.2.1 The Dedicated Parking Spaces shall be for the purpose of the parking of personal motor vehicles (non-commercial) by ACC, its successors, assigns, transferees, tenants, subtenants, licensees, invitees or occupants of ACC and/or the ACC Property.

8.2.2 The Dedicated Parking Spaces shall be allocated to specific space locations mutually acceptable to the University and ACC. ACC agrees to cooperate with the University in the use of parking stickers, tokens or other forms of identification to permit the University to monitor the use of spaces in the Parking Garage. The total number of parking spaces in the Parking Improvements and the Dedicated Parking Spaces shall be sixty (60) spaces.

8.2.3 The lease of the Dedicated Parking Spaces shall be at no cost to ACC or to its tenants, subtenants, licensees, invitees or occupants of the ACC Property using the spaces.

8.2.4 The Dedicated Spaces Parking Lease shall be for a term of twenty (20) years.

8.2.5 The University may, at any time and from time to time, promulgate such rules and regulations in connection with the use of the Parking Garage as the the University may deem necessary or appropriate, in its reasonable discretion, and so long as all such rules and regulations shall be enforced equally against the respective tenants, subtenants, licensees, invitees or occupants of the University and the ACC Property.

8.3 At the Closing, ACC shall grant and convey grant and convey the Temporary Garage Construction Easement and Temporary Surface Parking Construction Easement pursuant to the terms and provisions of an Easement Agreement (herein so called) substantially similar to the Easement Agreement dated of even date herewith by and between ACC and DCPA or otherwise upon terms and conditions acceptable to ACC, the University and DCPA.

9. RISK OF LOSS. The risk of loss or damage to the University Exchange Parcel by fire or other casualty or a taking by condemnation, eminent domain or similar proceedings shall remain with the University until Closing and the risk of loss or damage to the ACC Exchange Parcel by fire or other casualty or a taking by condemnation, eminent domain or similar proceedings shall remain with ACC until Closing. If, prior to Closing, the University Exchange Parcel or the ACC Exchange Parcel shall be destroyed or damaged by fire or other casualty or condemned or threatened to be condemned to any extent, the respective Party otherwise acquiring such property pursuant to the terms of this Agreement may terminate this Agreement by written notice to the other Party within the earlier to occur of (a) ten (10) days following discovery by such Party of such damage or taking or threatened taking or (b) the Closing Date. If such Party fails to timely terminate this Agreement as a result thereof, despite such damage or condemnation or threatened condemnation, such Party shall (despite such damage or condemnation or threatened condemnation) close and consummate the purchase of the University Exchange Parcel or ACC Exchange Parcel then remaining (after any such damage or condemnation or threatened condemnation) without any reduction or adjustment in the consideration associated therewith and the selling party shall at Closing assign to the purchasing party any and all insurance proceeds or condemnation proceeds theretofore received by the selling party in connection with such damage or condemnation or threatened condemnation and all rights of the selling party in and to any and all claims therefor existing on the part of such selling party and applicable to such damage or condemnation or threatened condemnation.

10. NO SHOP. As partial but material consideration for this Agreement and the transaction subject to this Agreement as well as all related covenants and agreements under this Agreement, the Parties agree that during the period commencing on the date of this Agreement and ending on the earlier of the Closing Date or the termination of this Agreement, the Parties will not, directly or indirectly (a) encourage, solicit or initiate discussions or negotiations with

any corporation, partnership, person, entity or group, other than with each other, concerning any sale of the University Exchange Parcel and ACC Exchange Parcel, or acquisition of beneficial ownership with respect to the University Exchange Parcel and ACC Exchange Parcel, or (b) otherwise initiate any action (unless in response to an unsolicited offer) which would prejudice the ability of each Party to close under this Agreement.

11. CONFIDENTIALITY AND PUBLICITY. Except to the extent required or permitted by law, the provisions of this Agreement shall be held in strictest confidence by the University and ACC and shall not be publicized or disclosed in any manner whatsoever; provided, however, that (a) the parties may disclose this Agreement, in confidence, to their respective attorneys, accountants, auditors, tax preparers, financial advisors, and other parties necessary to perform due diligence prior to closing; and (b) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.

12. NOTICES. Any notice required or permitted to be given by any provision of this Agreement shall be in writing, executed by the party giving such notice, and delivered by certified mail, return receipt requested, postage prepaid, addressed as follows:

ACC: American Campus Communities Operating Partnership LP
Attn: Jennifer Jones
12700 Hill Country Blvd.
Suite T-200
Austin, TX 78738

University: West Virginia University
Attn: Shannon N. Mundell, Director of Real Estate
PO Box 6555
48 Donley Street, 4th Floor
Morgantown, West Virginia 26506-6555

with copy to: West Virginia University
Attn: General Counsel
PO Box 6204
Morgantown, WV 26506-6204

DCPA: Downtown Campus Parking Associates, LLC
Attn: Ryan Lynch
PO Box 4034
Morgantown, WV 26504-4034

and

Brian Helmick, Esq.
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, East
Charleston, WV 25301

13. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

14. ASSIGNMENT. This Agreement may not be assigned by either the University or ACC without the prior written consent of the other Party.

15. ENTIRE AGREEMENT. This Agreement constitutes and contains all stipulations and agreements between the University and ACC, superseding any prior written or oral agreements between them respecting the subject matter of this Agreement, and unless in subsequent writing which has been signed and dated by the parties, no representations by either of the parties other than contained in this Agreement shall be binding upon either Party. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one (1) and the same agreement, binding upon the Parties hereto, notwithstanding that all of the Parties are not signatories to the same counterparts. Executed copies hereof may be delivered by email transmission or other electronic means and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

16. MODIFICATIONS. Any provision to modify, alter, enlarge, or change this Agreement shall be in writing, signed and dated by both Parties.

17. BINDING AGREEMENT. This Agreement and all of its terms and conditions shall extend to and be binding upon the Parties hereto and upon each of their respective heirs, executors, administrators, successors and permitted assigns.

18. REPRESENTATIONS AND WARRANTIES. The Parties mutually hereby represent and warrant to each other as to their respective Parcel to be conveyed as follows, which representations and warranties shall be true and correct as of the date hereof and as of the date of Closing and the truth and correctness of which shall be a conditions precedent to University's and ACC's obligations to close the transaction contemplated by this Agreement:

18.1 There are no existing or pending actions, suits or proceedings with respect to or affecting any aspect of any of the University Exchange Property or ACC Exchange Parcel nor, to the actual knowledge of the University or ACC, as applicable, have any such actions, suits or proceedings been threatened or asserted.

18.2 Neither party has knowledge of any pending or, to the actual knowledge of the University or ACC, as applicable, threatened condemnation, or similar proceeding affecting the University Exchange Parcel or ACC Exchange Parcel, respectively, or any portion thereof.

18.3 To the actual knowledge of the University or ACC, as applicable, there are not now any Hazardous Substances used, generated, stored, treated or disposed of on the University Exchange Parcel and ACC Exchange Parcel in such manner or quantity so as to constitute a violation under Environmental Laws, except as in the normal course of business for each tenant and owner of the University Exchange Parcel and ACC Exchange Parcel which, to

the actual knowledge of the University or ACC, as applicable, was in compliance with Environmental Laws.

18.4 At the time of Closing, the University Exchange Parcel and ACC Exchange Parcel shall be vacant and not subject to any written or unwritten agreement or lease.

For all purposes of this Agreement, the "actual knowledge" of the University and ACC shall mean, with respect to the University, the actual conscious knowledge of Dusty Hays, without inquiry, and, with respect to ACC, the actual, conscious knowledge of Brett Hahnel, without inquiry.

Notwithstanding the foregoing provisions of this Section 18, in the event that (a) any of the representations is made "to the actual knowledge" of a Party and (b) subsequent to the date hereof but prior to Closing information (collectively, the "New Information") is discovered and presented to the Party making the representation or is discovered by the other Party, which New Information, if in the possession of the Party making the representation on the date hereof, would have rendered such representation false in a material respect (i.e., if such Party had actual knowledge of the New Information on the date hereof then such representation, as made by such Party, would have been false in a material respect) then, provided that the Party making the representation discloses such New Information not otherwise discovered by the other Party to the other Party prior to the Closing Date or in the event the other Party discovers New Information: (i) such representation shall be deemed to have been remade as of the date such disclosure is made to take such New Information into account, and (ii) such remaking of such representation shall not be deemed a breach of such representation by the Party making the representation; provided, however, that such remaking of such representation shall give the other Party the right to terminate this Agreement, so long as written notice of the same is delivered within ten (10) days after the other Party's receipt of the New Information, as its sole and exclusive remedy.

19. DEFAULT AND REMEDIES.

19.1 In the event ACC defaults under this Agreement or fails to perform any obligation of ACC under this Agreement, including, without limitation, the obligation to convey good and indefeasible title to the ACC Exchange Parcel to the University on the Closing Date subject only to the ACC Exchange Parcel Permitted Exceptions in accordance with the provisions of this Agreement, or in the event of a breach of any of ACC's representations or warranties, and if such default or breach is not cured within five (5) days after written notice thereof from the University, then the University, at its option, and as its sole and exclusive remedies, may (a) bring suit against ACC for specific performance of ACC's obligations under this Agreement or (b) terminate this Agreement by written notice to ACC, in which event ACC agrees to pay to the University, as liquidated damages, and not as a penalty, the amount of One Million and No/100 Dollars (\$1,000,000.00) within thirty (30) days of receipt from the University of written demand therefor whereupon neither the University nor ACC shall have any further liability hereunder, except those expressly surviving the termination of this Agreement. Should ACC fail to pay when due such amount demanded, the amount demanded shall bear interest at the rate of twelve percent (12%) per annum until paid. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the University will incur as a result of the

failure of the Exchange to be consummated pursuant to this Agreement and further agreed that it would be otherwise impractical and extremely difficult to estimate the damages that the University may suffer.

19.2 Subject to Section 6 herein (but only so long as the University has not waived its right to terminate this Agreement thereunder), in the event the University defaults under this Agreement or fails to perform any obligation of the University under this Agreement, including, without limitation, the obligation to convey good and indefeasible title to the University Exchange Parcel to ACC on the Closing Date subject only to the University Exchange Parcel Permitted Exceptions in accordance with the provisions of this Agreement, or in the event of a breach of the University's representations or warranties, and if such default or breach is not cured within five (5) days after written notice thereof from ACC, then ACC at its option, and as its sole and exclusive remedies, may (a) bring suit against the University for specific performance of the University's obligations under this Agreement or (b) terminate this Agreement by written notice to ACC. In addition, if this Agreement is terminated by either Party for any reason other than the default of ACC hereunder (including, without limitation, the failure of the conditions precedent to the University's obligations to perform hereunder as set forth in Section 6 and the termination by the University of this Agreement pursuant to Section 6, the termination of the Agreement by either Party pursuant to the express provisions thereof and/or the default of the University hereunder and the termination by ACC of this Agreement pursuant to (b) above), the University agrees to pay ACC, as liquidated damages, and not as a penalty, the amount of One Million and No/100 Dollars (\$1,000,000.00) within thirty (30) days of receipt from ACC of written demand therefor whereupon neither the University nor ACC shall have any further liability hereunder, except those expressly surviving the termination of this Agreement. Should the University fail to pay when due such amount demanded, the amount demanded shall bear interest at the rate of twelve percent (12%) per annum until paid. Such liquidated damages are hereby agreed to be a reasonable estimate of damages ACC will incur as a result of the failure of the Exchange to be consummated pursuant to this Agreement and further agreed that it would be otherwise impractical and extremely difficult to estimate the damages that ACC may suffer.

19.3 Notwithstanding the foregoing provisions, in the event of a failure by the University to perform any obligation, covenant or agreement of the University under Section 8.1 and the continuance of such failure for a period of five (5) days following the receipt of written notice from ACC to the University specifying such failure (or such longer period as may be reasonable under the circumstances, not to exceed sixty (60) days following ACC's initial notice to the University, as long as the University commences the cure of such failure within such five (5) day period and thereafter diligently pursues same to completion), ACC may pursue such remedies which may be available to ACC at law or in equity, including, without limitation, the right to seek to enforce specific performance of the University's obligations hereunder or, by written notice to the University may elect to take over construction of the Parking Improvements in accordance with the terms of Section 8.1, in which event, the following shall apply: (a) the University shall have no further right to cause to be constructed the Parking Improvements, (b) ACC shall be entitled to: (i) take all necessary action to cause the Parking Improvements to be completed substantially in accordance with the Surface Parking Plans; (ii) have the benefit of all easements which may be required, necessary or appropriate in order for ACC to cause the

Parking Improvements to be completed, as may be reasonably necessary for construction and staging, for the purposes of constructing the Parking Improvements in the locations shown in the Plans; (iii) engage all contractors and subcontractors deemed necessary or appropriate by ACC to complete the Parking Improvements, use all or any part or parts of the labor, materials, supplies and equipment contracted for by or on behalf of the University, whether or not previously incorporated into the Parking Improvements, all in the sole and absolute discretion of ACC; (iv) pay, settle or compromise all bills or claims for labor performed and materials furnished in connection with the construction and installation of the Parking Improvements, including, without limitation, claims arising prior to or after the taking over construction by ACC; and as costs are incurred by ACC in connection with completing the construction of the Parking Improvements in accordance with the terms hereof, present invoices for labor performed or materials furnished in connection with such construction to the University. If ACC elects to take over construction of the Parking Improvements in accordance with the provisions of this Section 19.3, the University shall cause DCPA to pay ACC on demand all sums paid or incurred by ACC in connection with the construction of the Parking Improvements in accordance with the terms hereof.

19.4 The provisions of this Section 19 shall expressly survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

UNIVERSITY:

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS on behalf of WEST VIRGINIA UNIVERSITY, E. Gordon Gee, President

By: Narvel G. Weese, Jr.
Narvel G. Weese, Jr.
Its: Vice President for Administration and Finance

ACC:

AMERICAN CAMPUS COMMUNITIES, OPERATING PARTNERSHIP

By: _____
Its: _____

The undersigned does hereby acknowledge its obligations to construct the Parking Improvements all as more particularly set forth under Section 8 and Section 19.3 of this Real Estate Exchange and Development Agreement.

Downtown Campus Parking Associates, LLC,
a West Virginia limited liability company

By: _____
Its: _____

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

UNIVERSITY:

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS on behalf of WEST VIRGINIA UNIVERSITY, E. Gordon Gee, President

By: _____
Narvel G. Weese, Jr.
Its: Vice President for Administration and Finance

ACC:

AMERICAN CAMPUS COMMUNITIES, OPERATING PARTNERSHIP

By: *[Signature]*
Its: vice president

The undersigned does hereby acknowledge its obligations to construct the Parking Improvements all as more particularly set forth under Section 8 and Section 19.3 of this Real Estate Exchange and Development Agreement.

Downtown Campus Parking Associates, LLC,
a West Virginia limited liability company

By: _____
Its: _____

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

UNIVERSITY:

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS on behalf of WEST VIRGINIA UNIVERSITY, E. Gordon Gee, President

By: _____
Narvel G. Weese, Jr.
Its: Vice President for Administration and Finance

ACC:

AMERICAN CAMPUS COMMUNITIES, OPERATING PARTNERSHIP

By: _____
Its: _____

The undersigned does hereby acknowledge its obligations to construct the Parking Improvements all as more particularly set forth under Section 8 and Section 19.3 of this Real Estate Exchange and Development Agreement.

Downtown Campus Parking Associates, LLC,
a West Virginia limited liability company

By: Ray L
Its: Managing Member

EXHIBIT A
ACC Property

EXHIBIT B

Parking Garage Property

EXHIBIT C

Construction Easement Area

DESCRIPTION OF
0.48 ACRE
Temporary Construction Easement

A tract of land, situate along University Avenue, in Forth Ward of Morgantown, Morgan District, Monongalia County, West Virginia, more particularly described as follows;

Beginning at a P-K nail set on the northeastern right of way line of University Avenue, at the common corner between American Campus Communities Operating Partnership, LP, recorded in Deed Book 1360 at page 39, and the West Virginia University Board of Governors, recorded in Deed Book 1468 at page 379, thence running with the right of way line of said University Avenue

N30°57'38"W, at 62.55 feet crossing a P-K nail found, at 82.27 feet crossing the common corner between Lot D and Lot E, in all a total distance of 138.37 feet to a point at the common corner between Lot E and Lot F, thence leaving said University Avenue and running through and across the property of said American Campus Communities Operating Partnership, LP, from which this conveyance is a part of for six (6) calls

N59°12'34"E, 112.40 feet to a point at the common corner between said Lots E and F, said point also being in the common division line of Lot B, thence

S67°26'59"E, 88.65 feet to a point in the common division line between Lot A and Lot C, thence

S31°28'27"E, 62.77 feet to a Railroad Spike found at the northern corner to Quay Avenue, thence

S59°11'46"W, 24.53 feet to a 5/8 inch rebar with plastic cap found at the southern corner to said Quay Avenue, thence

S25°05'57"E, 4.30 feet to a 5/8 inch rebar with plastic cap found at the common corner to said West Virginia University Board of Governors, recorded in Deed Book 1468 at page 379, thence leaving Quay Avenue and running with said West Virginia University Board of Governors

S59°07'48"W, at 28.83 feet crossing a ½ inch rebar found, at 44.75 feet crossing a 5/8 inch rebar with plastic cap found, in all a total distance of 140.70 feet to the point of beginning, containing 0.48 acres more or less.

EXHIBIT D

Plans

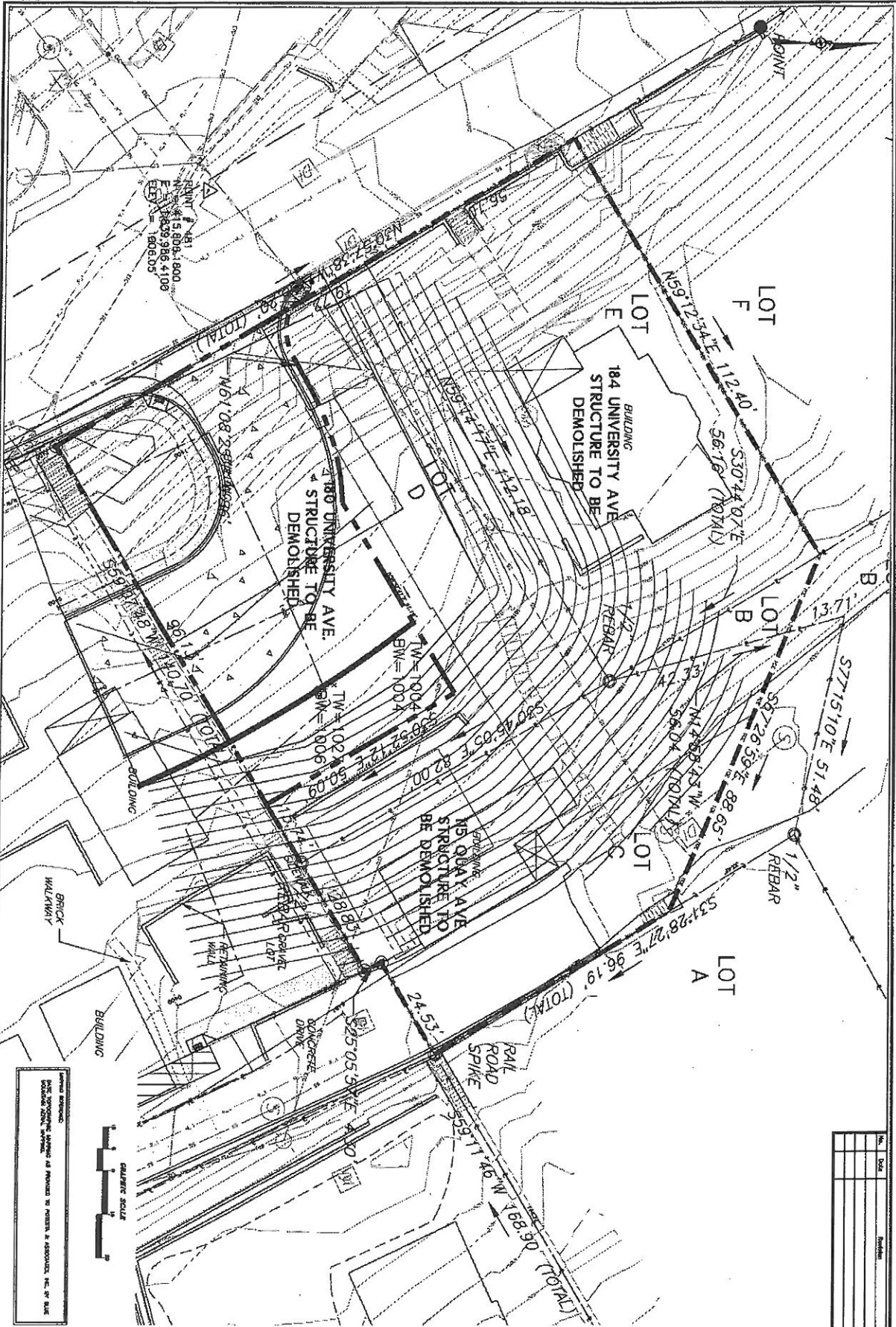


EXHIBIT E
ACC Exchange Parcel
DESCRIPTION OF
0.11 ACRE
PROPERTY TRANSFER TO
WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS

A tract of land, situate along University Avenue, in Forth Ward of Morgantown, Morgan District, Monongalia County, West Virginia, more particularly described as follows;

Beginning at a P-K nail set on the northeastern right of way line of University Avenue, at the common corner between American Campus Communities Operating Partnership, LP, recorded in Deed Book 1360 at page 39, and the West Virginia University Board of Governors, recorded in Deed Book 1468 at page 379, thence running with the right of way line of said University Avenue

N30°57'38"W, 62.55 feet to a P-K nail set, thence leaving said University Avenue and running through and across the property of said American Campus Communities Operating Partnership, LP, from which this conveyance is a part of

around a curve to the left, having an arc length of 11.73 feet, a radius of 13.00 feet, and a chord bearing and distance of N86°59'53"E, 11.34 feet to a point, thence

N61°08'25"E, 9.86 feet to a point, thence

around a curve to the right, having an arc length of 26.35 feet, a radius of 56.00 feet, and a chord bearing and distance of S74°37'12"W, 26.11 feet to a point, thence

N58°57'41"E, 51.19 feet to a 5/8 inch rebar with plastic cap set, thence

S30°52'12"E, 50.09 feet to a 5/8 inch rebar with plastic cap set in the common division line of said West Virginia University Board of Governors, from which a 1/2 inch rebar found bears N59°07'48"E at 15.74 feet, thence with said division line

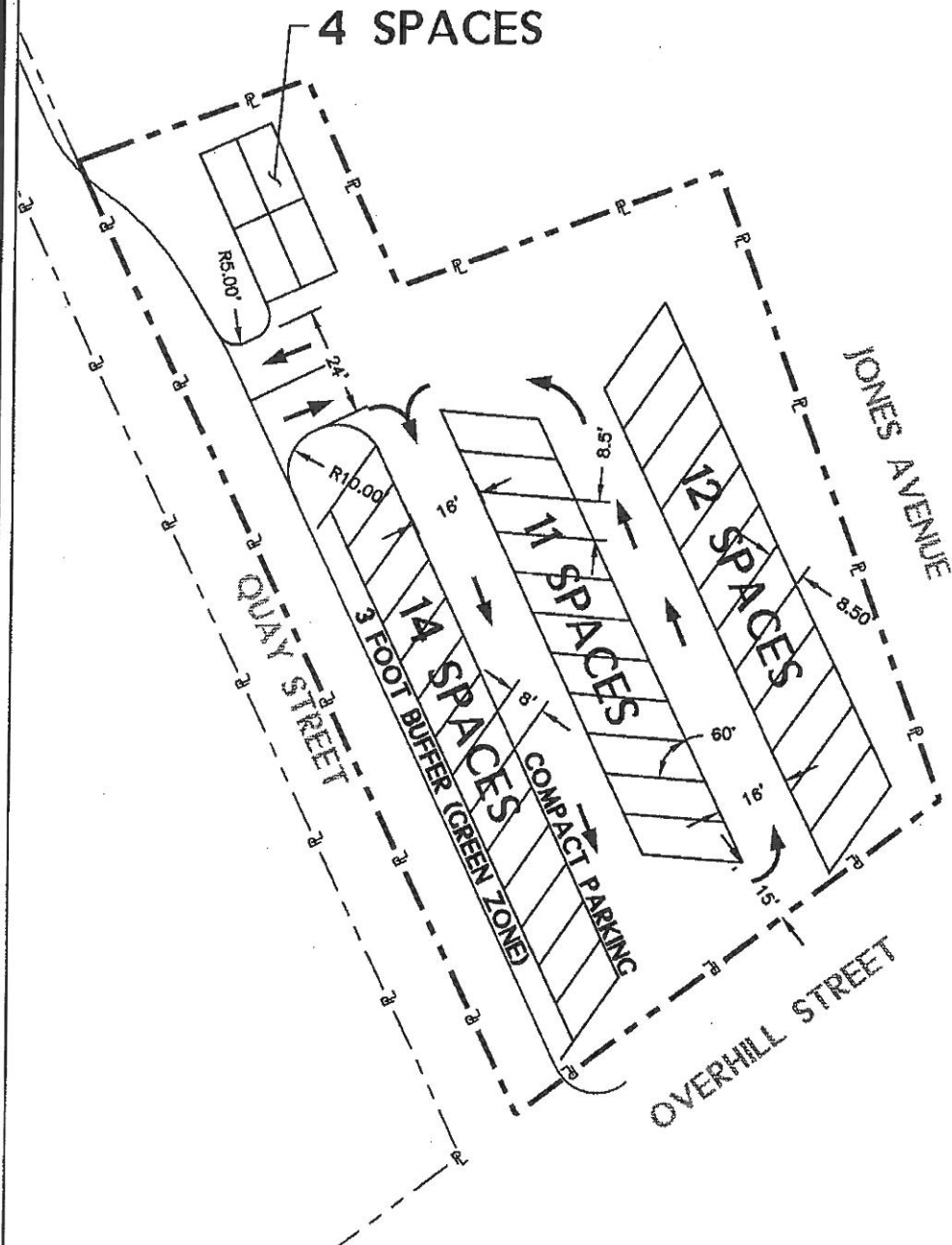
S59°07'48"W, 96.13 feet to the point of beginning, containing 0.11 acres more or less.

EXHIBIT F

University Exchange Parcel

EXHIBIT G
Surface Parking Plans

PARKING AREA FOR SUNNYSIDE COMMONS 41 PARKING SPACES



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