

September 13, 2013

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,

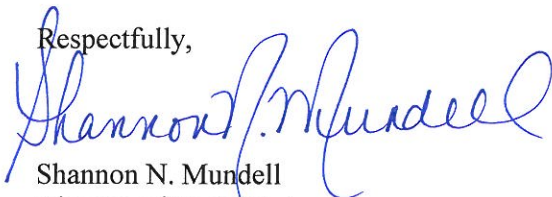
Pursuant to West Virginia Code § 18B-19-13 and appended for your review, please find a copy of the following documents: i) that certain Agreement for Purchase and Sale of Real Estate, dated September 6, 2013, between MON-VIEW, LLC, a West Virginia limited liability company (“SELLER”) and WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA UNIVERSITY, an agency and higher education institution of the State of West Virginia (“WVU”) 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 purchase from SELLER that certain real property consisting of approximately seven (7) useable acres located and situate in the Town of Granville, Monongalia County, West Virginia, together with all improvements, easements, appurtenances and rights relating thereto, for the purchase price of Two Million Three Hundred Thousand Dollars (\$2,300,000.00). WVU intends to purchase the real property to construct, operate, and maintain a multi-use recreational complex including, but not limited to, a baseball stadium with customary concessions and other related amenities.

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

cc: 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 Agreement for Purchase and Sale of Real Estate, dated September 6, 2013, 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) agrees to purchase from MON-VIEW, LLC, a West Virginia limited liability company, ("Seller") that certain real property located and situate in the Town of Granville, Monongalia County, West Virginia, consisting of approximately seven (7) useable acres, for the purchase price of Two Million Three Hundred Thousand Dollars (\$2,300,000.00).

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

To construct, operate, and maintain a multi-use recreational complex including, but not limited to, a baseball stadium with customary concessions, and other related amenities including, but not limited to, other food and beverage sales, both alcoholic and non-alcoholic, restaurant or similar facilities.

This acquisition has been approved by the West Virginia University Board of Governors, and the closing of such sale will occur on or after October 16, 2013. Seller has retained FEOH Realty, LLC as its exclusive broker for the transaction, and Seller shall be solely responsible for the payment of the commission. WVU has not engaged any real estate broker, finder, or agent in connection with this transaction.

The property is more particularly designated as the following:

Beginning at a 5/8" iron bar (found) in the 80' right of way of University Town Centre Drive, from which a 5/8" iron bar (found) bears N 70° 41' 33" E, 573.02 feet, said iron bar being a corner of Granville Corporation, Tax Map 9 Parcel 4, now or formerly owned by Town of Granville (Deed Book No. 1340 at Page 213), Granville Corporation Tax Map 9 Parcel 1.3, now or formerly owned by West Virginia United Health System, Inc. (Deed Book 1374 at Page 162), Grant District Tax Map 5C Parcel 1, now or formerly owned by Mon-View, LLC (Deed Book 1279 at Page 693), and a corner of Granville Corporation Tax Map 9 Parcel 1, now or formerly owned by Mon-View, LLC (Deed Book No. 1286 at Page 618);

Thence with the future University Town Centre Drive extension and said Mon-View, LLC, with a curve to the right, having a radius of 317.17 feet and a chord length of 359.22 feet, a chord bearing S 76° 00' 27" E, 340.32 feet to a point;

Thence S 43° 33' 41" E, 195.01 feet;

Thence with a curve to the right, having a radius of 309.98 feet and a chord length of 404.52 feet, a chord bearing S 6° 10' 34" E, 376.42 feet to a point;

Thence S 31° 11' 41" W, 287.38 feet to a point;

Thence leaving said right of way and through Granville District Tax Map 4 Parcel 15, now or formerly owned by Mon-View, LLC (Deed Book 1483 at Page 646), N 75° 05' 29" W, 418.72 feet to a point, said point being a common corner of said West Virginia United Health System, Inc. and said Mon-View, LLC;

Thence N 0° 22' 28" E, 635.23 feet to a 5/8" iron bar (found);

Thence N 23° 42' 09" W, 110.00 feet to the point of beginning containing 399,883 sq. ft. or 9.18 Acres ±.



## AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT (herein, the "Contract") is made and entered into as of the 6 day of September 2013, (herein, the "Effective Date") by and between MON-VIEW, LLC, a West Virginia limited liability company having a mailing address at Boyers Avenue, Star City, West Virginia 26504, herein sometimes referred to as "Seller," and the WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS on behalf of WEST VIRGINIA UNIVERSITY, an agency and higher education institution of the State of West Virginia having a mailing address at 48 Donley Street, Morgantown, West Virginia 26505, herein sometimes referred to as "Purchaser."

**WHEREAS**, Purchaser intends to purchase from Seller the Property defined below for the following express purpose (the "Purpose"):

To construct, operate, and maintain a multi-use recreational complex, including but not limited to a baseball stadium with customary concessions, and other related amenities, including but not limited to other food and beverage sales, both alcoholic and non-alcoholic, restaurant or similar facilities.

**NOW THEREFORE, WITNESSETH:** That, for and in consideration of an amount of Ten Dollars (\$10.00) and the mutual covenants and conditions set forth and contained in this Agreement, Purchaser hereby offers and agrees to purchase and Seller hereby agrees to sell that certain parcel of real estate hereinafter described for the consideration recited and subject to the following terms and conditions:

**1. Agreement of Purchase and Sale.** Upon the terms and conditions herein provided, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, a certain tract or parcel of land containing approximately seven (7) acres, more or less, situate in the Town of Granville, Monongalia County, West Virginia, the approximate configuration of which land is approximately depicted and shown on the site plan attached to and incorporated herein as Exhibit A. Notably, Seller and Purchaser mutually acknowledge that the precise local and legal description will be determined more specifically by comprehensive engineering design and planning efforts but shall be located within the general area shown on Exhibit A, which is a part of the "Phase III Property" that is more fully described in Deed Book 1483, at Page 646.

a. Not later than five (5) days after the Effective Date, Seller shall provide to Purchaser a proposed final survey drafted and prepared, at Seller's sole expense, by a licensed land surveyor; depicting the precise location of the boundary lines of such land and the acreage of such land to the nearest one-one-thousandth (1/1000<sup>th</sup>) of an acre. Purchaser shall have a period of five (5) days in which to accept the survey, provide comment and revisions to the survey, or to object to such survey. In the event that Seller and Purchaser agree as to such survey, the agreed survey (herein, the "Survey") will be attached to and incorporated herein as Exhibit A-1, and the land depicted on the Survey



shall become the property subject to this Contract (herein, the "Property"). In the event that Seller and Purchaser are unable to agree to the survey within such 5-day period, either party may terminate this Agreement, without any liability or obligation to the other party, upon written notice to the other party, and this Agreement will be null and void.

b. Notwithstanding any provision herein to the contrary, Seller shall not convey to Purchaser, but will except from the conveyance of the Property, all of Seller's right, title and interest in and to the coal, oil, natural gas, coalbed methane and any and all other minerals, if any, (herein, the "Reserved Minerals") within and underlying the Property.

2. **Purchase Price.** The purchase price (the "Purchase Price") for the Property shall not exceed the sum of Two Million Three Hundred Thousand Dollars (\$2,300,000.00) for seven (7) acres, adjusted upward or downward, based on the Survey, to reflect an agreed Purchase Price of Three Hundred Thousand Dollars (\$300,000.00) per acre, or fractional acre, encompassed within the Property. Upon completion of the Survey, Seller and Purchaser shall memorialize in writing the final Purchase Price and such document will be attached to this Agreement as Exhibit C. The Purchase Price shall be payable in immediately available funds of the United States at Closing, except as otherwise provided herein to the contrary. Further, at or prior to Closing, as defined below, Purchaser will cause to be paid, by check or by wire transfer, the Purchase Price to Purchaser's legal counsel, Jackson Kelly, PLLC. Purchaser's legal counsel will deposit the check or wire transfer into its real estate trust account and make the appropriate disbursements pursuant to a disbursement agreement mutually agreed upon and signed at Closing by the parties.

3. **Intentionally Deleted.**

4. **Due Diligence Information, Title Assurance and Survey.**

a. **Delivery of Documents.** Promptly within five (5) days after the execution of this Contract by both parties, Seller shall deliver or cause to be delivered to Purchaser's designated representative all items described on **Exhibit "B"** attached hereto that are within Seller's custody and control.

b. **Title Assurance.** At any time prior to Closing, Purchaser may obtain, at its sole cost and expense, such assurance of Seller's good and marketable title to the Property, for the purpose of verifying the Property is clear of all liens, encumbrances, and any other title matters that may disrupt or interfere with the Purpose, as Purchaser deems appropriate, including without limitation a title opinion issued by an attorney of Purchaser's choosing or a commitment for a policy of title insurance issued by a title insurance company of Purchaser's choosing, either or both of which shall be herein referred to as "Title Assurance."

c. **Survey.** Seller shall obtain, at its sole cost and expense, a survey of the Property in accordance with Section 1 (a) of this Contract. The survey shall be prepared in accordance with the requirements of Purchaser, but, at a minimum, shall clearly depict

the boundary lines of the Property and the acreage encompassed within the boundary lines to the nearest one-one-thousandth of an acre.

d. **Objections.** Upon completion and acceptance of a survey, Purchaser shall have a period of fifteen (15) days in which to review and update the Title Assurance and deliver to Seller, in writing, such objections as Purchaser may have to anything contained or set forth therein. Any items to which Purchaser does not object within the fifteen (15) day review period shall be deemed to be approved by Purchaser and shall be "Permitted Exceptions" for purposes of this Contract. Seller may, but shall have no obligation to attempt to, remedy or cure Purchaser's objections during the thirty (30) day period following Seller's receipt of such written objection(s) (the "Cure Period"). In the event Seller does not cure such objections prior to the expiration of the Cure Period, Purchaser shall have the right to (i) terminate this Contract by written notice to Seller, given within ten (10) days of the expiration of the Cure Period or (ii) proceed to Closing. If Purchaser does not terminate this Contract, as aforesaid, Purchaser shall be deemed to have waived its objections to all matters of title, except such matters, if any, as to which Seller may expressly agree to cure.

5. **Inspection Period.** During the term of this Contract, Purchaser, its agents, contractors, employees, and assigns shall be entitled to enter onto the Property for any purpose, including conducting such audits, inspections, or investigations thereon as Purchaser may deem appropriate, including for purposes of conducting core drilling. The cost of the inspections undertaken by Purchaser pursuant to this Contract shall be borne solely by Purchaser. Purchaser shall be entitled for any reason related to the condition of the Property to terminate this Contract by written notice delivered to Seller on or prior to the expiration of thirty (30) days following the Effective Date. (The period commencing on the Effective Date and ending at 6:00 p.m., local time, on the 30th day after the Effective Date is herein referred to as the "Inspection Period"). If Purchaser notifies Seller prior to the expiration of the Inspection Period that Purchaser has elected to terminate this Contract, except to the extent expressly provided to the contrary, the Parties shall have no further obligations or liabilities hereunder and this Contract shall be null and void. Purchaser agrees to keep the Property free and clear of any mechanics' liens resulting from Purchaser's activities on the Property. Purchaser agrees that it shall be responsible for all injuries, losses, liens, claims, judgments, liabilities, costs, expenses or damages (including, without limitation, reasonable attorneys' fees and court costs) which result from or arise out of any personal injury or property damage caused by Purchaser, its agents, contractors or other representatives, to the extent allowed by the laws of the State of West Virginia, in connection with its entry upon the Property. In the event Purchaser does not purchase the Property, Purchaser agrees to promptly return the Property to the same condition in which the Property existed prior to Purchaser's making any inspection, including reclaiming and seeding any portion of the Property that has been disturbed by drilling or other invasive activities. The provisions of this paragraph shall survive any termination of, or Closing under, this Contract.

6. **Representations and Warranties.** Seller represents and warrants to Purchaser that, as of the Effective Date, and as of the Closing:

- a. Seller will convey to Purchaser, at Closing, good and marketable title to the Property, free and clear of liens and encumbrances, subject only to Permitted Exceptions. (As used in this Contract, the term "Permitted Exceptions" shall mean (i) the Reserved Minerals, (ii) restrictive covenants and conditions governing the use, upkeep and/or maintenance of the Property contained in Seller's deed for the Property or other recorded instruments, (iii) statutory liens for real property taxes that are not overdue or delinquent, (iv) utility rights of way and easements that do not impose burdens or use restrictions on the Property that materially exceed the burdens or restrictions customarily contained in such instruments in Monongalia County, West Virginia, and (v) such other defects or irregularities that do not, singularly or in the aggregate, materially adversely affect the value of the Property or its utility for its intended use.)
- b. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers.
- c. There is no pending or, to the knowledge of Seller, threatened condemnation or similar proceeding or special assessment affecting the Property.
- d. There is no pending or, to Seller's knowledge, threatened litigation or administrative proceeding affecting the Property or Seller's title to the Property or Seller's right to enter into and perform this Contract.
- e. The execution and delivery of, and Seller's performance under, this Contract are within Seller's powers and have been duly authorized by all requisite internal action. This Contract constitutes a binding obligation of Seller enforceable in accordance with its terms except to the extent limited by the intervention of equity, bankruptcy or other similar laws.
- f. There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or other debtor relief laws contemplated by, pending, or threatened against Seller or the Property.
- g. The Property was formerly utilized as a site for coal mining activities. To the knowledge of Seller, the Property has been reclaimed in compliance with all applicable federal and state laws, and all permits and bonds formerly in existence with respect to the former coal mining activities and the subsequent reclamation activities have been released.
- h. To the knowledge of Seller, there are no Hazardous Substances located in, on or about the Property, the Property has not been used as a land fill or for the production or disposal of Hazardous Substances, and the Property is in compliance with and not in violation of any applicable federal or state environmental law. (As used herein, the term Hazardous Substances means asbestos, petroleum products, polychlorinated biphenyl (PCBs), radioactive materials and other substances in quantities that are included within the definition of "hazardous substances," "hazardous materials" or "toxic substances" in



the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Hazardous Materials Transportation Act, the Toxic Substances Control Act or the Clean Water Act.)

i. Seller is not prohibited from consummating the transactions contemplated in this Contract by any law, regulation, agreement, instrument, restriction, order or judgment.

j. Seller is duly organized, validly existing and in good standing under the laws of the State of West Virginia. Seller has full right, title, authority and capacity to execute and perform this Contract and to consummate all of the transactions contemplated herein, and the individual who executes and delivers this Contract and all documents to be delivered to Purchaser hereunder is and shall be duly authorized to do so.

k. There are no outstanding contracts or rights to purchase the Property or any portion thereof in favor of any third party.

**7. Special Provisions.**

a. Seller covenants and agrees with Purchaser that, between the Effective Date and Closing, Seller shall not execute or create any contract, option to purchase, easement, covenant, condition, restriction, lien or encumbrance with respect to the Property or any portion thereof.

b. To the extent that any offsite easements over, under or across other property owned by Seller are necessary for utility service to the Property, Seller shall grant appropriate offsite easements to Purchaser for such purpose.

c. Subject to Section 8 hereof, Purchaser acknowledges that the ownership, use, maintenance and upkeep of the Property is presently subject to covenants, conditions and restrictions contained in various recorded documents, including without limitation (i) that certain Interparties Agreement among Mountaineer Property Co., L.L.C. and others, dated June 5, 2003, and of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1254, Page 496, (ii) that certain instrument captioned Easements With Covenants And Restrictions And Restrictions Affecting Land among Wal-Mart Real Estate Business Trust and others, dated March 9, 2005, of record in Deed Book 1290, Page 202, and (iii) that certain instrument captioned Agreement of Covenants and Restrictions Affecting Land among West Virginia United Health System, Inc. and others, dated September 30, 2008, of record in Deed Book 1374, Page 167.

d. If, at any time from and after the Effective Date, the Town of Granville or any other governmental entity, imposes, or threatens to impose, any assessment on the Property, or any financial obligation on the owner of the Property, for the purpose of funding a traffic light or other traffic control device within University Town Centre,

Purchaser shall enter into good faith negotiations with respect to whether it will contribute to the costs associated with such traffic light or other traffic control device within University Town Centre. Provided that, if this Contract is terminated prior to Closing, any obligation to pay an assessment will revert to Seller. Seller represents to Purchaser that, as of the Effective Date, Seller is not aware of any discussions or preliminary plans on the part of the Town of Granville, or any other governmental entity, to compel the installation of a traffic light or other traffic control device at or in the vicinity of the Property.

e. During the Inspection Period, Seller and Purchaser shall review the preliminary grading plan, attached hereto as Exhibit 7.e, and work in good faith to resolve any and all objections that either party may have to such plan. If the parties cannot agree upon the terms and conditions of the final grading plan during the Inspection Period, either party shall be entitled to terminate this Contract and this Contract shall be null and void. The final agreed upon grading plan shall be the plan relied upon for Seller's grading work.

f. Not later than 75 days following the Closing, Seller shall deliver the Property to Purchaser in accordance with the following:

i. In a final rough-graded condition with vegetation grubbed and removed from the Property in accordance with the grading plan defined and agreed to by the parties pursuant to Section 7.e

ii. With temporary electricity extended to the boundary of the Property at a location to be mutually determined by the parties.

iii. With a rough graded access road in the approximate location of the proposed extension of University Town Centre Drive completed so Purchaser may have access to the Property for construction purposes.

g. Except as noted herein, Seller agrees to use its best efforts diligently coordinate and expedite the permanent extension of all requisite utilities (including water, electricity, gas, telephone, and sewer) and the permanent extension of University Town Centre Drive to the boundary of the Property at locations mutually agreed by Seller and Purchaser, in coordination with Purchaser's construction schedule and Seller's development schedule with all such permanent work completed no later than October 1, 2014 or as otherwise mutually agreed upon by the parties to meet the needs of Purchaser and to fulfill the Purpose. All of such work shall be completed at Seller's sole risk and expense. The parties acknowledge that with respect to the permanent extension of water and sewer, all such permanent work shall be completed no later than December 31, 2014. The obligations of Seller in this section shall survive Closing.

h. No later than sixty (60) days following the completion of the construction of the extension of University Town Centre Drive, as set forth above, Seller shall promptly request the City of Granville to properly and officially adopt an Ordinance and accept the public dedication of this extension of University Town Centre Drive.

**8. Conditions Precedent.** Each of the following items shall be a condition precedent to Purchaser's obligation to purchase the Property. If any one or more of such conditions precedent is not, or in the reasonable opinion of Purchaser will not be, satisfied at or prior to Closing, Purchaser shall be entitled, at its election, to terminate this Contract, without liability therefore, by written notice to Seller or to waive such condition and proceed to Closing.

a. The zoning classification of the Property, and all applicable covenants and restrictions affecting the Property, shall not prohibit the Purpose.

b. No lawsuit, appeal or other action shall have been filed by any party, directly or indirectly, involving the Property, including without limitation, any lawsuit or other action for the purpose of challenging, contesting or seeking to prohibit, restrain, enjoin or delay the Purpose.

c. All of Seller's representations and warranties shall be true and correct without regard to the knowledge of Seller, and Seller shall have performed all of Seller's obligations under this Contract.

d. No adverse environmental or geological condition shall exist with respect to the Property that would unreasonably impede or interfere with the Purpose. For the avoidance of doubt, this condition precedent is not waived or extinguished with the passage of the Inspection Period.

e. Intentionally Deleted.

f. The execution and delivery of a First Amendment to Easements with Covenants and Restrictions Affecting Land by and among Wal-Mart Real Estate Business Trust, a Delaware statutory trust, Mon-View, LLC, a West Virginia limited liability company, and Consolidation Coal Company, a Delaware corporation, for the purpose of consenting to and modifying that certain Easements With Covenants And Restrictions And Restrictions Affecting Land among Wal-Mart Real Estate Business Trust and others, dated March 9, 2005, of record in Deed Book 1290, Page 202, as it pertains to the restrictive covenants placed upon the Property which prohibit, impede, or interfere with the Purpose, in a form satisfactory to Purchaser.

g. Execution and delivery of that certain Collaboration Agreement supporting the Purpose that is currently being negotiated by Seller, Purchaser, the County Commission of Monongalia County, and the Town of Granville.

**9. Closing.**

a. Date. The closing of the sale of the Property from Seller to Purchaser (the "Closing") 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), which shall occur no later than three (3) business days after the final determination of the precise local and legal description of the Property as contemplated in Section 1.

b. Seller's Deliveries. At the Closing, Seller shall furnish and deliver to Purchaser, at Seller's expense (except as otherwise herein provided), the following:

(i) A General Warranty Deed duly executed and acknowledged by Seller, dated as of the Closing, conveying good and marketable title to the Property to Purchaser, free and clear of all liens and encumbrances, subject only to Permitted Exceptions and the restrictions described hereinabove;

(ii) An assignment of all permits, approvals, licenses, and other rights and interests owned or held by Seller in connection with the Property;

(iii) An assignment of all necessary offsite easements, in form reasonably acceptable to Purchaser;

(iv) A Non-Foreign Certificate duly executed by Seller;

(vi) An Undertaking to complete the Seller's Work in the manner, and within the time period, set forth in section 7 e. of this Contract;

(vii) A duly executed memorandum of understanding relating to possible off-site parking in the vicinity of the Property, the terms of which to be agreed upon. Seller has no obligation to provide Purchaser with permanent off-site parking, but will assist with providing offsite parking to the extent it doesn't interfere with the sale of other property by Seller;

(viii) Such other instruments or documents as are necessary or reasonably required by Purchaser to consummate the transfer of the Property as herein contemplated.

c. Purchaser's Deliveries. At the Closing, Purchaser shall deliver to Seller, at Purchaser's expense, the following:

(i) The Purchase Price, less the Post-Closing Escrow Amount, in immediately available funds of the United States of America;

(ii) A duly executed memorandum of understanding relating to possible off-site parking in the vicinity of the Property, the terms of which to be agreed upon. Seller has no obligation to provide Purchaser with permanent off-site parking, but will assist with providing offsite parking to the extent it doesn't interfere with the sale of other property by Seller;

(iii) Evidence reasonably acceptable to Seller and Seller's counsel that this Contract, and Purchaser's consummation of the transaction herein contemplated and Purchaser's performance of its obligations herein set forth, have been duly approved by Purchaser's governing body;

(iv) Intentionally Deleted; and

(v) Such other instruments or documents as are necessary or reasonably required by Seller to consummate the transfer of the Property as herein contemplated.

d. Adjustments.

(i) Seller shall be responsible for payment of all taxes and assessments levied or assessed against the Property, except as may be agreed upon by Purchaser with respect to Section 7 d. of this Contract. Purchaser is exempt from taxation for real property tax purposes, therefore Seller, with respect to the Property, agrees to pay all real and personal property taxes that may be due and payable for all tax years (including 2014), as assessed by the Monongalia County Tax Assessor and to be collected by the Monongalia County Sheriff's Tax Office.

(ii) Intentionally Deleted.

(iii) The provisions of this Section 9.d. shall survive the Closing.

e. Expenses of Closing.

(i) Seller shall pay: [a] all amounts due and owing under Section 9(d); [b] its own attorneys' fees; and [c] other charges required to be paid by Seller pursuant to this Contract including, the cost of clearing any liens or encumbrances affecting the Property; recordation of any releases executed by creditors of Seller, Property Owner, or their predecessor(s) in title, as the case may be; and any and all real estate commissions or broker's fees.

(ii) Purchaser shall pay: [a] all title examination fees and title insurance premiums applicable to the transaction; [ b] its own attorneys' fees; [c] other charges required to be paid by Purchaser pursuant to this Contract; and [d] all recording fees and expenses incurred in connection with the transfer of the Property with the exception of Section 9(e)(i), above.

(iii) Purchaser is an agency of the State of West Virginia; therefore, the 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.

As a result of the aforementioned, Seller may not be obligated to pay a real estate transfer tax.

**10. Casualty or Condemnation Prior to Closing.** If at any time prior to the Closing any portion of the Property is destroyed or damaged by fire or any other casualty, or in the event a taking by condemnation, eminent domain or similar proceedings or a conveyance in lieu thereof is commenced or threatened with respect to any portion of the Property, Seller shall give notice thereof to Purchaser and Purchaser shall thereupon have the option to terminate this Contract upon written notice to Seller prior to Closing, in which event the Earnest Money shall be promptly refunded to Purchaser, whereupon this Contract shall be rendered null and void and the Parties shall have no further obligations hereunder. If Purchaser does not exercise its option under this Section 10 to terminate this Contract, this Contract shall remain in full force and effect and Seller shall assign or pay to Purchaser at Closing Seller's interest in and to any and all insurance proceeds and condemnation awards.

**11. Default and Remedies.**

a. Purchaser's Default. In the event Purchaser defaults or fails to perform any obligation of Purchaser under this Contract, and such default and failure shall remain uncured for a period of five (5) days following written notice thereof from Seller to Purchaser, Seller may, at its election, and as its exclusive remedy, (i) terminate this Contract or (ii) commence an action to compel specific performance of this Contract. If Seller elects to terminate this Contract and Purchaser's and Seller's rights and obligation under this Contract shall terminate.

b. Seller's Default. In the event Seller defaults under this Contract, or any material representation or warranty of Seller is not true, or in the event Seller fails to perform any material obligation of Seller under this Contract, including without limitation, the obligation to convey good and marketable title to the Property to the Purchaser on the Closing Date subject only to Permitted Exceptions and to perform each of the obligations of Seller required to be performed at Closing in accordance with the provisions of this Contract, all of which shall be considered material for purposes hereof, then Purchaser may, at its election, and as its exclusive remedy, (i) terminate this Contract, in which event Seller shall return the Earnest Money to Purchaser, or (ii) commence an action to compel specific performance of this Contract.

**12. Real Estate Brokerage.** Seller has retained FEOH Realty LLC as its exclusive broker for this transaction, and Seller shall be solely responsible for the payment of the commission



coming due to FEOH Realty LLC as a consequence of this transaction. Seller has not engaged any other real estate broker, finder or agent in connection with this transaction, and hereby agrees to indemnify and hold Purchaser harmless from any loss, liability, damage, cost or expense (including reasonable attorneys' fees) resulting from the failure of Seller to pay any such commission in accordance with the provisions of this sentence Purchaser has not engaged any real estate broker, finder or agent in connection with this transaction. The provisions of this paragraph shall survive the Closing of this Contract.

**13. Miscellaneous.**

a. Notices. All notices, requests and other communications under this Contract shall be in writing and shall be delivered in person by hand delivery or overnight delivery service, by facsimile or sent by certified mail, return receipt requested, addressed as follows:

If intended for Seller:                    Mon-View, LLC  
    Boyers Avenue  
    Star City, West Virginia 26504  
    Attn: John D. Lynch, President  
    Telephone: (304) 599-2244  
    Facsimile: (304) 599-2252  
    email: [davislynch.glass@frontier.com](mailto:davislynch.glass@frontier.com)

with a copy to:                                Brian D. Gallagher  
    Steptoe & Johnson PLLC  
    United Center, Suite 400  
    1085 Van Voorhis Road  
    Morgantown, WV 26507-1616  
    Telephone: (304) 598-8000  
    Facsimile: (304) 598-8116  
    email: [brian.gallagher@steptoe-johnson.com](mailto:brian.gallagher@steptoe-johnson.com)

If intended for Purchaser:                Shannon N. Mundell, Director of Real Estate  
    West Virginia University  
    PO Box 6555  
    48 Donley Street, 4<sup>th</sup> Floor  
    Morgantown, WV 26506-6555  
    Telephone: (304) 293.0394  
    Email: [Shannon.mundell@mail.wvu.edu](mailto:Shannon.mundell@mail.wvu.edu)

with a copy to:                                Office of the Vice President for Legal Affairs  
    and General Counsel  
    105 Stewart Hall  
    P.O. Box 6204  
    Morgantown, WV 26505-6204

Tele. No.: 304-293-5841  
Fax No.: 304-293-5752

Taunja Willis-Miller  
Jackson Kelly PLLC  
P.O. Box 619  
Morgantown, WV 26507-0619  
Telephone: (304) 284-4109  
Facsimile: (304) 284-4140

or at such other address, and to the attention of such other person, as the parties shall give notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof upon receipt at such address if delivered in person, by overnight delivery or by facsimile, or if mailed, upon deposit of both the original and any required copies in a post office or official depository of the United States Postal Service. Email addresses are included for reference purposes only, and any required notices must be delivered by one of the methods of delivery described above.

- b. Survival. Except as otherwise provided herein, the provisions of this Contract shall survive the Closing and shall not merge into the conveyance documents executed and delivered at Closing but shall survive the Closing for a period of twenty four (24) months.
- c. Entire Agreement; Modifications. This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the Party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.
- d. Applicable Law. This Contract shall be governed by, and construed in accordance with, the laws of the State of West Virginia.
- e. Captions. The captions in this Contract are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this Contract or any of the provisions hereof.
- f. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Contract and Purchaser's rights hereunder may not be assigned by Purchaser except with the prior written consent of Seller.

g. Time is Not of the Essence. With respect to all provisions of this Contract, time is not of the essence, provided, any extension of time for performance shall not exceed seven (7) days without the written consent of the parties.

h. Force Majeure. Neither party shall be in default under this Contract to the extent that the performance of its obligations (other than payment obligations) is delayed, hindered or prevented by a cause beyond the reasonable control of such party and without such party's fault or negligence, including, but not limited to, acts of God, adverse weather, declared or undeclared wars, blockades, hostilities, legal or illegal acts of government, epidemics, quarantines, riots, rebellions and labor strikes ("Force Majeure"). A party claiming Force Majeure shall promptly notify the other party in writing of the nature and extent of any Force Majeure claimed, and of the steps that the party is taking to restore its performance and overcome the cause creating the delay and/or nonperformance. While the obligations of the party giving notice shall be suspended during, but no longer than, the continuance of the event of Force Majeure insofar as they are affected by it, the affected party shall use all reasonable diligence to restore its performance as quickly as practicable. During the Force Majeure event, the parties shall meet to discuss whether there should be an equitable adjustment due to the Force Majeure event. For each day that a Force Majeure Event suspends the obligations of a party, the obligations shall be suspended for one day; provided, that no Force Majeure event shall suspend the obligations of a party for longer than fifteen (15) days from the date claimed. Thereafter, the party not invoking Force Majeure may terminate this Agreement without further liability to the party claiming Force Majeure by giving written notice to the other party.

i. Counterpart Execution. This Contract may be executed in multiple counterparts. A facsimile copy of this Contract bearing the signature of a Party hereto shall be sufficient to bind such Party to the terms of this Contract.


**SIGNATURE PAGE FOLLOWS**

SIGNATURE PAGE

WITNESS the execution of this Contract by the undersigned duly authorized representatives of Seller and Purchaser.

**SELLER:**

MON-VIEW, LLC

By:   
John D. Lynch  
Its: President

**PURCHASER:**

WEST VIRGINIA UNIVERSITY BOARD  
OF GOVERNORS on behalf of  
WEST VIRGINIA UNIVERSITY,  
James P. Clements, President

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

SIGNATURE PAGE



SIGNATURE PAGE

WITNESS the execution of this Contract by the undersigned duly authorized representatives of Seller and Purchaser.

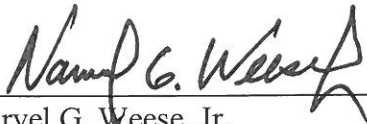
**SELLER:**

MON-VIEW, LLC

By: \_\_\_\_\_  
John D. Lynch  
Its: President

**PURCHASER:**

WEST VIRGINIA UNIVERSITY BOARD  
OF GOVERNORS on behalf of  
WEST VIRGINIA UNIVERSITY,  
James P. Clements, President

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

SIGNATURE PAGE

**EXHIBIT A (Page 1 of 2)**

**The Property**

Approximately 7 acres, more or less, the location of which is shown on the site plan attached hereto, being a portion of the real property entered on the Land Books of Monongalia County, West Virginia for the year 2013 in the name of Consolidation Coal Company and Mon-View, LLC, in Granville District, as part of the following:

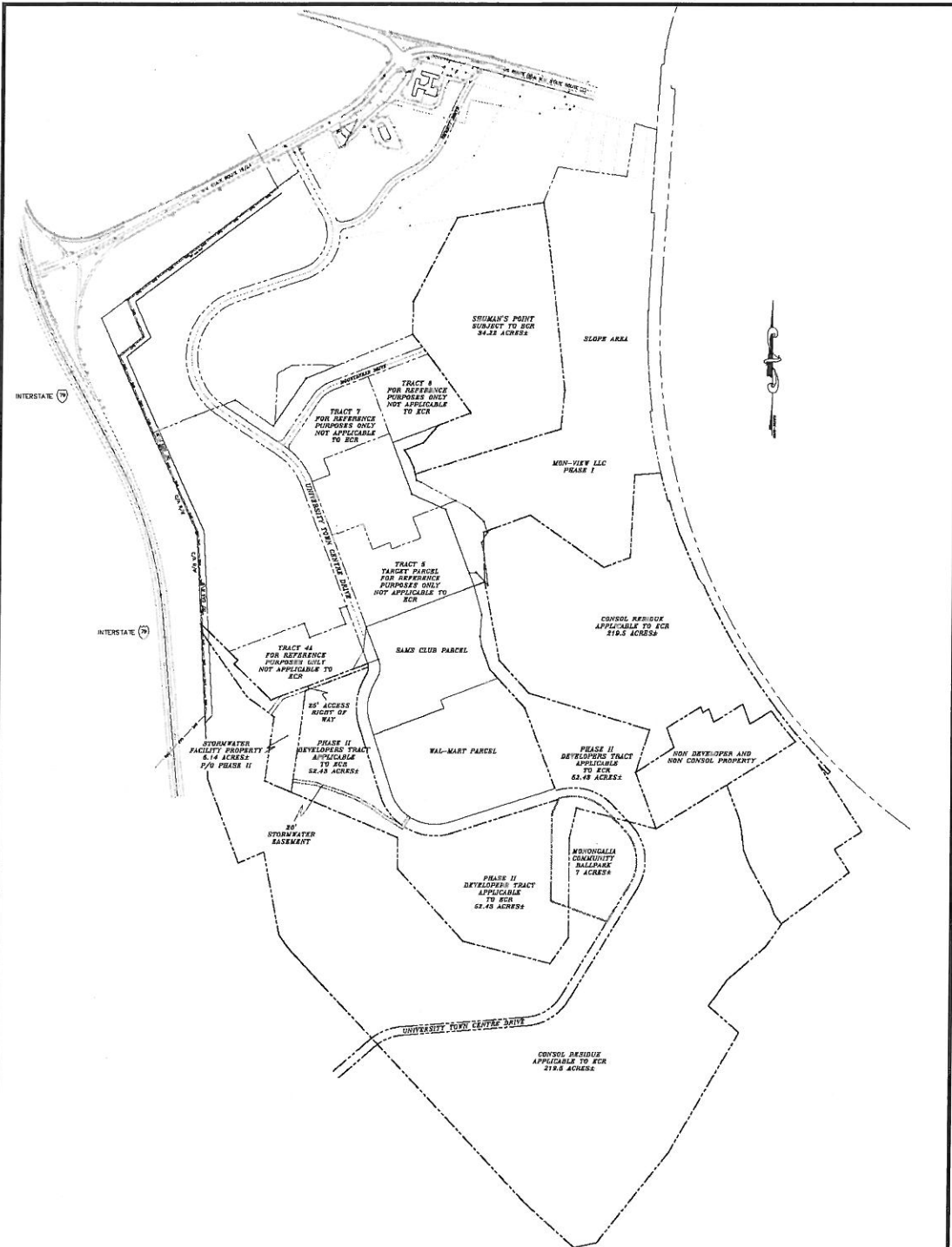
Map 9, P/O 2  
167.26 Ac Sur  
Dents Run (Option .88 Ac – Mountainview Property Co LLC)

Map 9, P/O 1  
24.16 Ac  
Dents Run


Map 4, P/O 1  
8.61 Acs & P/O Annulled Unnamed Alley

Map 4, P/O 15  
40.4 Acs Sur

Exhibit A (Page 2 of 2)



REVISED: 06/28/2013

<p>PROJECT NO:   CTL ENGINEERING OF WEST VIRGINIA, INC.                  401 West Virginia Ave., Suite 100                  Morgantown, WV 26501                  Phone: 304.293.1111 Fax: 304.293.1112                  www.ctlinc.com                  "SERVING THE COMMUNITY THROUGH ENGINEERING, ARCHITECTURE &amp; PLANNING"</p>	<p>EXHIBIT TO ECR                  BETWEEN WAL-MART,                  SAMS CLUB, MON-VIEW                  AND CONSOL</p>	<p>TOWN OF GRANVILLE, TAX MAP #4, P/O PARCEL #1 AND #15                  CASS DISTRICT, TAX MAP #15, P/O PARCEL #21                  GRANT DISTRICT, TAX MAP #6, P/O PARCEL #1                  MONONGALIA COUNTY, WEST VIRGINIA</p> <p>PROJECT NO: 021000124                  DRAWN BY: JFS                  APPROVED BY: JFS/MSJ                  DATE: 01/28/06                  SCALE: 1"=150'                  DRAWING NO: 1</p>
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## EXHIBIT A-1

### LEGAL DESCRIPTION

#### PHASE III – PAD #2

TM 4 PCLS 1& 15, TM 9 PCL 1 & TM 5 PCL 1

Beginning at a 5/8" iron bar (found) in the 80' right of way of University Town Centre Drive, from which a 5/8" iron bar (found) bears N 70° 41' 33" E, 573.02 feet, said iron bar being a corner of Granville Corporation, Tax Map 9 Parcel 4, now or formerly owned by Town of Granville (Deed Book No. 1340 at Page 213), Granville Corporation Tax Map 9 Parcel 1.3, now or formerly owned by West Virginia United Health System, Inc. (Deed Book 1374 at Page 162), Grant District Tax Map 5C Parcel 1, now or formerly owned by Mon-View, LLC (Deed Book 1279 at Page 693), and a corner of Granville Corporation Tax Map 9 Parcel 1, now or formerly owned by Mon-View, LLC (Deed Book No. 1286 at Page 618);

Thence with the future University Town Centre Drive extension and said Mon-View, LLC, with a curve to the right, having a radius of 317.17 feet and a chord length of 359.22 feet, a chord bearing S 76° 00' 27" E, 340.32 feet to a point;

Thence S 43° 33' 41" E, 195.01 feet;

Thence with a curve to the right, having a radius of 309.98 feet and a chord length of 404.52 feet, a chord bearing S 6° 10' 34" E, 376.42 feet to a point;

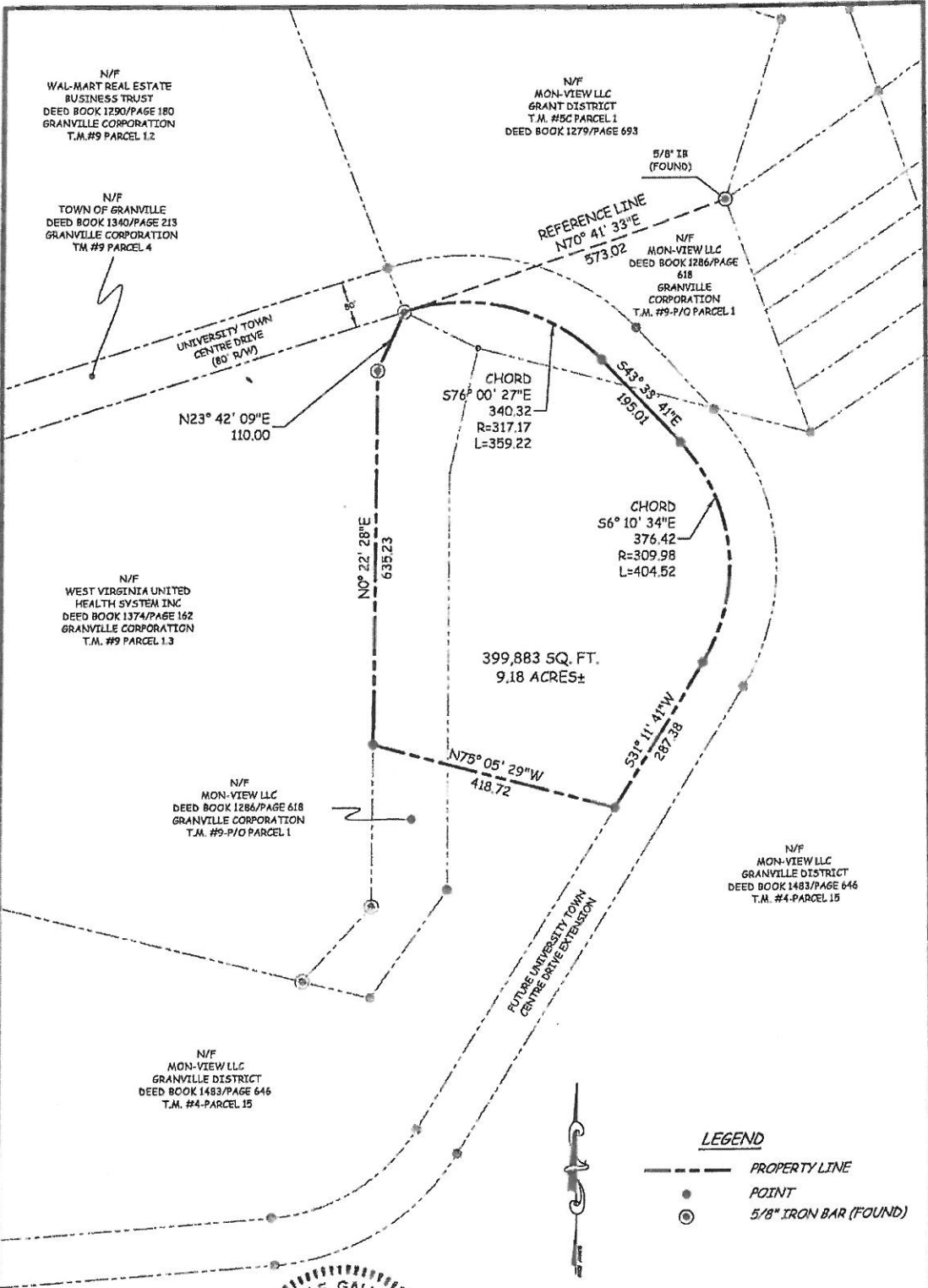
Thence S 31° 11' 41" W, 287.38 feet to a point;

Thence leaving said right of way and through Granville District Tax Map 4 Parcel 15, now or formerly owned by Mon-View, LLC (Deed Book 1483 at Page 646), N 75° 05' 29" W, 418.72 feet to a point, said point being a common corner of said West Virginia United Health System, Inc. and said Mon-View, LLC;

Thence N 0° 22' 28" E, 635.23 feet to a 5/8" iron bar (found);

Thence N 23° 42' 09" W, 110.00 feet to the point of beginning containing 399,883 sq. ft. or 9.18 Acres ±.





N/F  
WAL-MART REAL ESTATE  
BUSINESS TRUST  
DEED BOOK 1290/PAGE 180  
GRANVILLE CORPORATION  
T.M. #9 PARCEL 1.2

N/F  
MON-VIEW LLC  
GRANT DISTRICT  
T.M. #5C PARCEL 1  
DEED BOOK 1279/PAGE 693

N/F  
TOWN OF GRANVILLE  
DEED BOOK 1340/PAGE 213  
GRANVILLE CORPORATION  
T.M. #9 PARCEL 4

REFERENCE LINE  
N70° 41' 33"E  
573.02

5/8" IR  
(FOUND)

N/F  
MON-VIEW LLC  
DEED BOOK 1286/PAGE  
618  
GRANVILLE  
CORPORATION  
T.M. #9-P/O PARCEL 1

UNIVERSITY TOWN  
CENTRE DRIVE  
(80' R/W)

N23° 42' 09"E  
110.00

CHORD  
S76° 00' 27"E  
340.32  
R=317.17  
L=359.22

S43° 38' 41"E  
195.01

N/F  
WEST VIRGINIA UNITED  
HEALTH SYSTEM INC  
DEED BOOK 1374/PAGE 162  
GRANVILLE CORPORATION  
T.M. #9 PARCEL 1.3

N0° 22' 28"E  
635.23

CHORD  
S6° 10' 34"E  
376.42  
R=309.98  
L=404.52

399,883 SQ. FT.  
9.18 ACRES±

N/F  
MON-VIEW LLC  
DEED BOOK 1286/PAGE 618  
GRANVILLE CORPORATION  
T.M. #9-P/O PARCEL 1

N75° 05' 29"W  
418.72

S31° 11' 41"W  
287.38

N/F  
MON-VIEW LLC  
GRANVILLE DISTRICT  
DEED BOOK 1483/PAGE 646  
T.M. #4-PARCEL 15

N/F  
MON-VIEW LLC  
GRANVILLE DISTRICT  
DEED BOOK 1483/PAGE 646  
T.M. #4-PARCEL 15

FUTURE UNIVERSITY TOWN  
CENTRE DRIVE EXTENSION

**LEGEND**

- PROPERTY LINE
- POINT
- ⊙ 5/8" IRON BAR (FOUND)



  
 PATRICK E. GALLAGHER, P.E. # 9229  
 LICENSED PROFESSIONAL SURVEYOR  
 No. 1352  
 STATE OF WEST VIRGINIA  
 PATRICK E. GALLAGHER  
 LICENSED PROFESSIONAL SURVEYOR

**CTL Engineering by  
West Virginia, Inc.**  
 733 Fairmont Road Morgantown, WV 26501 Phone: 304/292-1135 Fax: 304/294-9302  
 310 C Street S. Charleston, WV 25303 Phone: 304/746-1140 Fax: 304/746-1143  
 CIVIL & SITE PLANNING \* SURVEYING & MAPPING \* ENVIRONMENTAL \* MINING \* GEOTECHNICAL \* TESTING & CONSTRUCTION OBSERVATION \* LABORATORY \*

**PLAT OF SURVEY**  
**MADE FOR**  
**MON-VIEW**  
 (PHASE III - PAD#2)  
 GRANVILLE CORPORATION  
 TAX MAP #4 PARCELS 1 AND 15 TAX MAP #9 PARCEL 1  
 GRANT DISTRICT TAX MAP #5 PARCEL 1  
 MONONGALIA COUNTY, WEST VIRGINIA  
 SCALE: 1"=200' DATE: SEPTEMBER 6, 2013  
 DRAWN BY: JFS CTL JOB NO. 12100029WV

**EXHIBIT "B"**

**DUE DILIGENCE**

1. Any and all leases affecting the Property and amendments thereto, as well as any other agreement, incident or related document which affects the obligations of Seller or the Property with respect to such leases: NONE
2. All outstanding third-party service contracts and agreements affecting the Property, including (i) Interparties Agreement dated June 5, 2003, (ii) Wal-Mart ECR dated March 9, 2005 and (iii) WVU Health System ACR dated September 30, 2008.
3. All mortgages, loan documents, bond documents, regulatory agreements and all other documents pertaining to the current financing on the Property: NONE
4. A written summary of any legal claims affecting the Property, and copies of all documents pertaining thereto: NONE
5. Any notices, correspondence, approvals, permits, and/or licenses or any agreements (including, without limitation subdivision and similar agreements) with, to or from any governmental or quasi-governmental authority having jurisdiction over the Property: NONE
6. Plans, specifications, certificates, inspection reports, notices, correspondence and all other documents prepared, transmitted or received by Seller, if any, in connection with any existing subdivision of or improvements constructed or to be constructed upon the Property: SEE Item 2 above.
7. Any letters or correspondence from utility companies reflecting the extent to which appropriate facilities have been installed and are available to the boundaries of the Property: None
8. Any and all additional data, plans, geological and engineering or environmental studies or reports, zoning information, water and sewer studies, topographic maps, platting and other materials, and all other information and agreements, relating to the Property or any portion thereof which is in the possession of the Seller or its agents: TO BE SUPPLIED
9. Any and all tax statements for three calendar years prior to the date of this Contract: AVAILABLE AT COURTHOUSE.
10. All licenses and permits affecting the Property: None
11. Any other agreements or documents not referenced above relating to or affecting the Property: NONE

**EXHIBIT C**

**PURCHASE PRICE**

To be determined following completion of the Survey pursuant to Section 2 of the Contract.

**EXHIBIT 7.e**  
**PRELIMINARY GRADING PLAN**  
(See Attached)