

May 31, 2019

Mr. Aaron Allred, Legislative Auditor, 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 W. Va. Code §18B-19-13

Dear Joint Committee on Government and Finance,

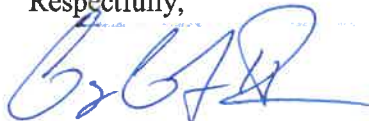
Pursuant to West Virginia Code § 18B-19-13 and appended for your review, please find a copy of the following documents: i) that certain Contract of Lease, dated December 15, 2017, between ACAP, LLC, A WEST VIRGINIA LIMITED LIABILITY COMPANY, (“SELLER”) and WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, 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 all of the seller’s right, title, and interest in and to that certain real property located and situate in Winfield District, Marion County, West Virginia, together with all improvements, easements, appurtenances and rights relating thereto, for the purchase price of One Million and Seven Hundred Fifty Thousand Dollars (\$1,750,000.00). WVU intends to purchase the real property to construct, operate, and maintain a practice facility to serve the West Virginia University Golf team.

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 304.293.4671.

Respectfully,



Gary G. Furbee, II
Deputy General Counsel

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 Contract of Lease dated December 15, 2017, ACAP, LLC, a West Virginia limited liability company, leased 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"), including the option to purchase, that certain real property located and situate in Winfield District, Marion County, West Virginia, consisting of all of the real estate and real property further described on Exhibit A, attached hereto.

By that certain Amendment One to Contract of Lease dated November 8, 2018, the parties agreed to extend the term of said Contract of Lease through June 30, 2019.

WVU now intends to acquire the real property by exercising the option to purchase the Premises, provided in the above referenced Contract of Lease.

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

To operate and maintain a West Virginia University Men's Golf Practice Facility.

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 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 ACAP, LLC 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:

EXHIBIT A

A CERTAIN TRACT OR PARCEL OF LAND SITUATE NEAR INTERSTATE 79 AND WHITE DAY CREEK, ON MONONGALIA COUNTY ROUTE 73, IN THE WINFIELD DISTRICT, MARION COUNTY AND THE CLINTON DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA, AND MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a 60" white oak found at a common corner to a parcel of land owned by ACAP, LLC (Tax Map 36 Parcel 9.1, Deed Book 982 Page 188), another parcel of land owned by ACAP, LLC (Tax Map 36 Parcel 11, Deed Book 1027 Page 514) and John R. Hart (Tax Map 36 Parcel 9, Deed Book 698 Page 401) said white oak bears, South 66 degrees 24 minutes 38 seconds West, a distance of 1483.64 feet from a stone found at a corner common to said ACAP, LLC (Parcel 9.1) and said ACAP, LLC (Parcel 11);

Thence, leaving said ACAP, LLC (Parcel 11) and with said Hart (Parcel 9) for three (3) lines, North 39 degrees 07 minutes 09 seconds West, a distance of 322.50 feet to a ¾" iron rebar now set;

Thence, North 08 degrees 49 minutes 59 seconds East, a distance of 459.00 feet to a ¾" iron rebar now set;

Thence, North 25 degrees 10 minutes 01 seconds West, a distance of 207.93 feet to a ¾" iron rebar now set on the southerly right of way line of Monongalia County Route 73 (Smithtown Road);

Thence, with said Monongalia County Route 73, for a curve to the left having a radius of 1081.74 feet, an arc length of 78.79 feet, and a chord bearing of North 32 degrees 38 minutes 33 seconds East, a distance of 78.77 feet to a concrete DOH monument found;

Thence, North 31 degrees 17 minutes 53 seconds East, a distance of 193.00 feet to a concrete DOH monument found;

Thence, South 58 degrees 32 minutes 13 seconds East, a distance of 9.94 feet to a concrete DOH monument found;

Thence, North 31 degrees 43 minutes 49 seconds East, a distance of 249.38 feet to a concrete DOH monument found;

Thence, by a curve to the right having a radius of 1381.02 feet, an arc length of 771.54 feet, and a chord bearing of North 47 degrees 12 minutes 00 seconds East, a distance of 761.54 feet to concrete DOH monument found;

Thence, North 15 degrees 07 minutes 09 seconds West, a distance of 14.15 feet to a concrete DOH monument found;

Thence, by a curve to the right having a radius of 1392.29 feet, an arc length of

344.46 feet, and a chord bearing of North 71 degrees 10 minutes 24 seconds East, a distance of 343.58 feet to point;

Thence, North 77 degrees 37 minutes 19 seconds East, a distance of 73.01 feet to point;

Thence, South 12 degrees 56 minutes 12 seconds East, a distance of 54.92 feet to a 5/8" iron rebar found;

Thence, North 77 degrees 37 minutes 39 seconds East, a distance of 213.42 feet to a 5/8" iron rebar found at the corner to William E. & Nancy Carpenter (Tax Map 21 Parcel 12, Deed Book 938 Page 142);

Thence, leaving said Monongalia County Route 73 and with said William E. & Nancy Carpenter (Parcel 12) for two (2) lines, South 14 degrees 46 minutes 10 seconds East, a distance of 187.76 feet to a 3/4" iron rebar now set;

Thence, North 89 degrees 09 minutes 59 seconds East, a distance of 200.00 feet to a 3/4" iron rebar now set at a corner to Roger Leeson Et Al (Tax Map 20 Parcel 17, Deed Book 150 Page 728) said rebar bears, South 14 degrees 40 minutes 01 seconds East, a distance of 250.00 feet from a 48" white oak;

Thence, leaving said Carpenter (Parcel 12) and with said Leeson (Parcel 17) for two (2) lines, South 14 degrees 46 minutes 01 seconds East, a distance of 64.07 feet to a 3/4" iron rebar now set;

Thence, North 45 degrees 12 minutes 15 seconds East, passing a 5/8" iron rebar found at a distance of 249.87 feet, and passing a 3/4" iron rebar now set at a distance of 428.59 feet, for a total distance of 478.59 feet to a point in the center of White Day creek;

Thence, with said White Day creek for seventeen (17) lines, South 06 degrees 26 minutes 14 seconds East, a distance of 138.14 feet to a point;

Thence, South 11 degrees 40 minutes 38 seconds West, a distance of 153.48 feet to a point;

Thence, South 18 degrees 54 minutes 10 seconds West, a distance of 170.59 feet to a point;

Thence, South 12 degrees 45 minutes 33 seconds West, a distance of 81.01 feet to a point;

Thence, South 04 degrees 16 minutes 46 seconds West, a distance of 81.11 feet to a point;

Thence, South 00 degrees 10 minutes 40 seconds West, a distance of 89.87 feet to a point;

Thence, South 24 degrees 06 minutes 16 seconds East, a distance of 78.79 feet to a

point;

Thence, South 51 degrees 04 minutes 00 seconds East, a distance of 64.72 feet to a point;

Thence, South 85 degrees 40 minutes 33 seconds East, a distance of 124.04 feet to a point;

Thence, South 80 degrees 09 minutes 47 seconds East, a distance of 211.34 feet to a point;

Thence, South 60 degrees 09 minutes 50 seconds East, a distance of 52.49 feet to a point;

Thence, South 21 degrees 02 minutes 03 seconds East, a distance of 78.75 feet to a point;

Thence, South 05 degrees 03 minutes 36 seconds East, a distance of 329.18 feet to a point;

Thence, South 28 degrees 12 minutes 38 seconds West, a distance of 74.69 feet to a point;

Thence, South 56 degrees 57 minutes 15 seconds West, a distance of 216.53 feet to a point;

Thence, South 36 degrees 05 minutes 35 seconds West, a distance of 107.31 feet to a point;

Thence, South 50 degrees 20 minutes 37 seconds West, a distance of 162.05 feet to a point;

Thence, leaving said White Day Creek, South 87 degrees 33 minutes 44 seconds West, passing a $\frac{3}{4}$ " iron rebar now set at a distance of 20.00 feet, for a total distance of 210.62 feet to a stone found at a corner to Daniel R. and Kerry L. Black (Tax Map 36 Parcel 13, Deed Book 798 Page 736) said stone bears, South 88 degrees 51 minutes 48 seconds East, a distance of 80.36 feet from a 48" white oak, a corner to said ACAP, LLC (Parcel 11);

Thence, with said Black (Parcel 13), South 34 degrees 06 minutes 40 seconds West, a distance of 878.37 feet to a stone found at the corner common to said Black (Parcel 13), and Jason K. and Julie A. Black (Tax Map 36 Parcel 12, Deed Book 1039 Page 905);

Thence, leaving said Black (Parcel 13) and with said Black (Parcel 12), South 46 degrees 22 minutes 53 seconds West, a distance of 976.69 feet to a stone found at the corner of said Black (Parcel 12) and said Hart (Parcel 9);

Thence, leaving said Black (Parcel 12), and with said Hart (Parcel 9) for two lines, North 07 degrees 30 minutes 59 seconds East, a distance of 431.95 feet to a $\frac{3}{4}$ " iron

rebar now set;

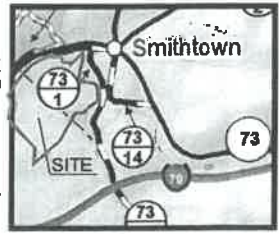
Thence, North 41 degrees 38 minutes 05 seconds West, a distance of 753.98 feet to the **Point of Beginning**, containing 95.78 acres, **More or Less**, as shown on a plat attached hereto and made a part of this description.

The above described tracts being the same lands conveyed to ACAP, LLC from Victoria R. Gianola Et Al as recorded in Deed Book 1244 Page 647, at the Office of the Clerk, Monongalia County, West Virginia, and conveyed to ACAP, LLC from Victoria R. Gianola Et Al as recorded in Deed Book 982 Page 188, and R. Fred Steele & ACAP, LLC from Terry Allen Steele Et Al as recorded in Deed Book 1027 Page 514, at the Office of the Clerk, Marion County, West Virginia.

LINE	BEARING	DISTANCE
L1	N 39°07'09" W	322.50'
L2	N 25°10'01" W	207.93'
L3	N 31°17'53" E	193.00'
L4	S 58°32'13" E	9.94'
L5	N 31°43'49" E	249.38'
L6	N 14°39'04" W	14.08'
L7	N 77°37'19" E	73.01'
L8	S 12°56'12" E	54.92'
L9	N 77°38'39" E	213.43'
L10	S 14°46'00" E	187.70'
L11	N 89°09'59" E	200.00'
L12	S 14°46'01" E	64.07'
L13	N 45°11'13" E	249.95'
L14	N 45°21'51" E	50.06'
L15	N 45°12'59" E	178.51'
L16	S 06°26'14" E	138.01'
L17	S 11°40'38" W	153.48'
L18	S 18°54'10" W	170.59'
L19	S 12°45'33" W	81.01'
L20	S 04°16'46" W	81.11'
L21	S 00°10'40" W	89.87'
L22	S 24°06'16" E	78.79'
L23	S 51°04'00" E	64.72'
L24	S 85°40'33" E	124.04'
L25	S 80°09'47" E	211.34'
L26	S 60°09'50" E	52.49'
L27	S 21°02'03" E	78.75'
L28	S 28°12'38" W	74.69'
L29	S 56°57'15" W	216.53'
L30	S 36°05'35" W	107.31'
L31	S 50°20'37" W	162.05'
L32	S 88°27'55" W	216.79'
L33	N 04°57'19" E	429.00'

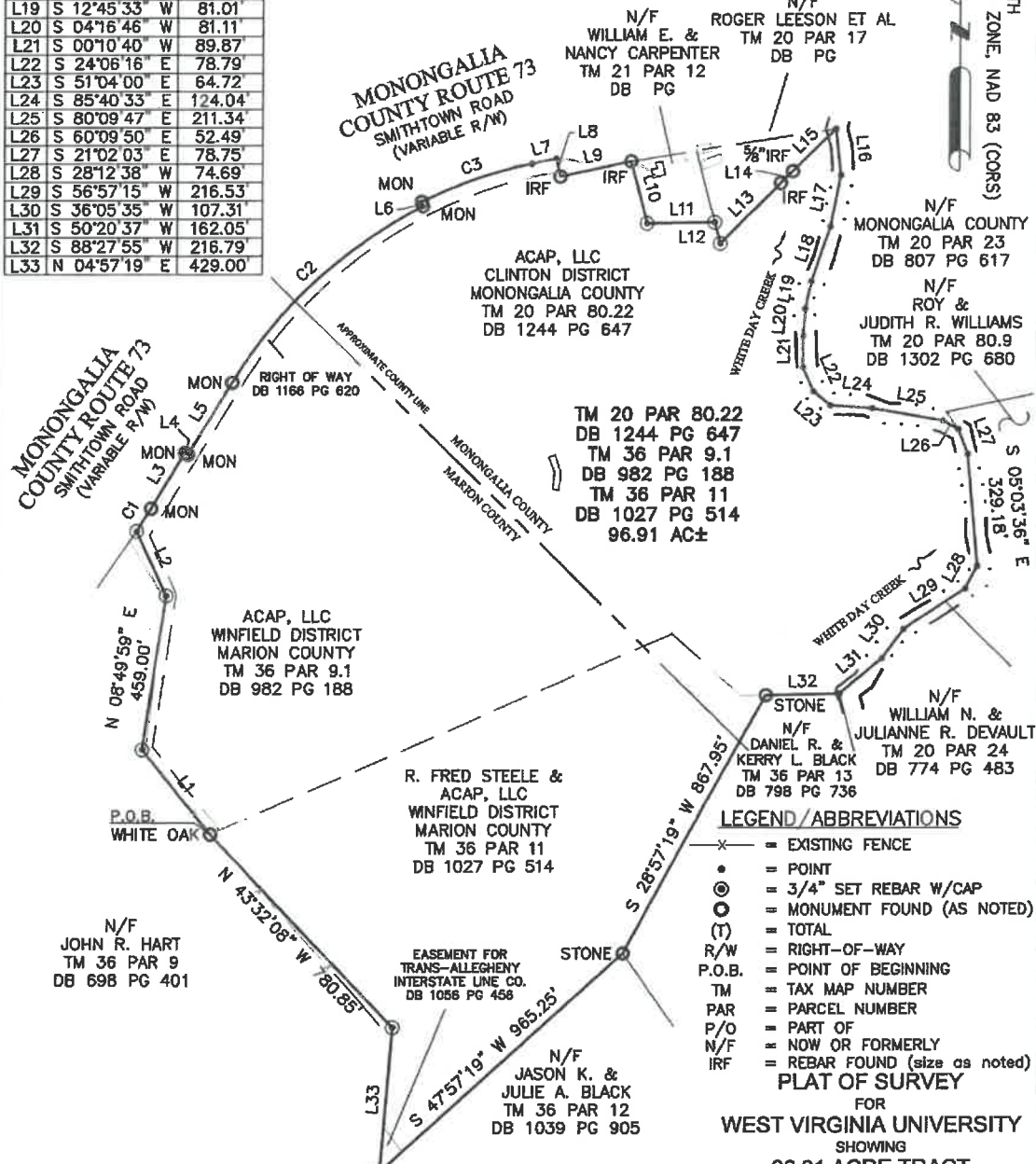
NOTE: THE TRACTS SHOWN BEING THE SAME LANDS CONVEYED TO ACAP, LLC BY VICTORIA R. GIANOLA ET AL AS RECORDED IN DEED BOOK 1244 PAGE 647 AS RECORDED IN DEED BOOK 1027 PAGE 514, AT THE OFFICE OF THE CLERK, MONONGALIA COUNTY, WEST VIRGINIA, AND CONVEYED TO ACAP, LLC BY VICTORIA R. GIANOLA ET AL AS RECORDED IN DEED BOOK 982 PAGE 188, AND R. FRED STEELE & ACAP, LLC BY TERRY ALLEN STEELE ET AL AS RECORDED IN DEED BOOK 1027 PAGE 514, AT THE OFFICE OF THE CLERK, MARION COUNTY, WEST VIRGINIA. NOTE: THIS SURVEY WAS CONDUCTED WITHOUT BENEFIT OF A LAWYER'S TITLE REPORT AND MAY NOT REFLECT ALL EXCEPTIONS, RIGHT-OF-WAYS, EASEMENTS OR RESTRICTIONS

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	1081.74'	78.79'	N 32°38'33" E	78.77'
C2	1382.29'	771.45'	N 47°11'27" E	761.48'
C3	1382.29'	344.46'	N 71°10'24" E	343.58'



VICINITY MAP NOT TO SCALE

GRID NORTH
WV NORTH ZONE, NAD 83 (CORRS)

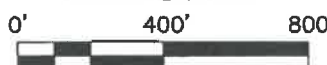


- LEGEND / ABBREVIATIONS**
- * = EXISTING FENCE
 - = POINT
 - ⊙ = 3/4" SET REBAR W/CAP
 - ⊙ = MONUMENT FOUND (AS NOTED)
 - (T) = TOTAL
 - R/W = RIGHT-OF-WAY
 - P.O.B. = POINT OF BEGINNING
 - TM = TAX MAP NUMBER
 - PAR = PARCEL NUMBER
 - P/O = PART OF
 - N/F = NOW OR FORMERLY
 - IRF = REBAR FOUND (size as noted)

PLAT OF SURVEY
FOR
WEST VIRGINIA UNIVERSITY
SHOWING
96.91 ACRE TRACT
ON THE LANDS OF
ACAP, LLC ET AL
CLINTON DIST.
MONONGALIA CO. WEST VIRGINIA
TM 20 PAR 80.22 DB 1244 PG 647
R. FRED STEELE & ACAP, LLC
WINFIELD DIST.
MARION CO. WEST VIRGINIA
TM 36 PAR 11 DB 1027 PG 514
TM 36 PAR 9.1 DB 982 PG 188
DATE: 10-10-2018



THRASHER
THE THRASHER GROUP, INC.
800 WHITE OAKS BOULEVARD
BRIDGEPORT, WV 26330
304-624-4108
mhyma@thrashergruop.com
WWW.THRASHERENG.COM



CAD FILE: R:\050-6918-WHITE DAY BOUNDARY-WVU-1\SURVEY\PROPERTY NEEDS\050-6918_deeds.tlh.dwg

CONTRACT OF LEASE

THIS CONTRACT OF LEASE ("Lease"), made December 15, 2017, by and between ACAP, LLC, a West Virginia limited liability company, hereinafter referred to as "Lessor," and the West Virginia University Board of Governors on behalf of West Virginia University ("WVU"), a state agency, hereinafter also referred to as "Lessee."

WHEREAS, WVU has sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is required necessarily by the institution;

WHEREAS, the space herein leased is necessary for the proper function of the WVU Department of Intercollegiate Athletics, on behalf of WVU's golf team, hereinafter referred to as "Tenant;"

NOW THEREFORE, in consideration of the full and complete performance of the covenants, terms, and provisions contained herein, The Lessor and Lessee agree to the following:

1. BASIC LEASE PROVISIONS

The Basic Lease Provisions are presented as follows for the purpose of providing a summary of certain basic terms of the Lease. Their being so presented is not in derogation of any other provisions of this Lease, and shall not imply that such Basic Lease Provisions are to be construed in any other manner than in summary of the context of all of the other terms and conditions of this Lease.

- a. Premises: Name: White Day Golf Course
 Address: 3911 Smithtown Rd, Fairmont, WV 26554
 Size: 95.55 acres more or less (Surface Only)

- b. Rent: Cost per Month: \$3,000
 Cost per Year: \$36,000

- c. Utilities and Services: The Tenant shall provide for all utilities and services on the Premises, as necessary.

- d. Initial Term of Lease: One (1) year, beginning on January 1, 2018, and ending on December 31, 2018.

- e. Option: WVU shall have the option to purchase the Premises, during the Term of Lease.

2. PREMISES; COMMON AREAS

The Lessor hereby leases to the Lessee, and Lessee hereby leases from Lessor for use by the Tenant, the leased premises described in Sections 1a above and as further described as follows ("Premises"):

Parcel 1 (Surface Only): Containing approximately 71.05 acres, as further described in that certain deed to ACAP, LLC, dated January 27, 2003, and recorded on February 3, 2003, in the Clerk of the County Commission of Monongalia County, in Deed Book 1244, at Page 647; and also recorded on February 21, 2003, in the Clerk of the County Commission of Marion County in Deed Book 982, at Page 188.

Parcel 2 (Surface Only): Containing approximately 24 ½ acres, more or less, as further described in that certain deed to ACAP, LLC, dated August 2, 2007, and recorded on August 27, 2007, in the Clerk of the County Commission of Marion County in Deed Book 1027, at Page 514; and also in that certain Deed of Correction to ACAP, LLC, dated March 13, 2008, and recorded on _____ in the Clerk of the County Commission of Marion County in Deed Book _____, at Page _____.

3. TERM

The initial term of this Lease, subject to the provisions hereof, shall begin on January 1, 2018 ("Start Date") and end at midnight on December 31, 2018 ("Term"). PROVIDED HOWEVER, this Lease may be canceled by the Lessee as hereinafter provided in Sections 8, 10 and 21, before the end of the term. Pursuant to provisions of W.Va. Code §18B-19-12 (e) (3), this Lease shall be considered renewed for each succeeding state fiscal year during the Term of the Lease unless this Lease is canceled by the Lessee before the end of the then current fiscal year pursuant to Section 21 hereunder.

4. RENT

The Lessee covenants that the Tenant shall pay rent unto the Lessor, as rent for the Premises herein leased, the sum of Three Thousand Dollars (\$3,000), per month, payable in arrears, upon receipt of invoice from the Lessor to the Tenant. Invoices shall be prepared by the Lessor and provided to the for payment processing.

Payment shall be due thirty (30) days after a month completion and upon receipt of invoice. Any further delay shall be communicated to the Lessor who may be entitled to interest per WV State Code.

5. OPTION TO PURCHASE

Lessee, as part of the consideration herein, is hereby granted the exclusive right, option and privilege of purchasing the Premises, together with all rights, privileges, easements, improvements and appurtenances relating thereto ("Option to Purchase"). Lessee must exercise the Option to Purchase on or before the expiration of the Term of this Lease. Upon exercise of the Option to Purchase pursuant to and in accordance with the terms and conditions of this agreement, subject only to formal approval of the West Virginia University Board of Governors, Lessee shall purchase the Premises from Lessor and Lessor shall sell the Premises to Lessee, on a date as is mutually agreeable to the parties ("Closing") but no later than sixty (60) days after the exercise of the Option to Purchase, pursuant to the terms and conditions set here:

- a. If the Option to Purchase is exercised by Lessee, Lessee shall pay or otherwise deliver to Lessor and Lessor agrees to accept, as and for consideration for the Premises a purchase price of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) which shall be paid in the form of cash or immediately available funds ("Purchase Price").
- b. Lessor agrees to convey the Premises to Lessee and Lessee agrees to purchase from Lessor with covenants of General Warranty free and clear of all encumbrances arising after the Start Date, and all monetary liens, excepting the lien for the real estate taxes or other governmental assessments not yet due or payable, and other title matters which do not substantially affect the marketability of title to the Premises. The deed from Lessor to Lessee 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 the State of West Virginia, or to 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.

- c. Upon execution of this Lease and expiring the earlier to occur between (i) receipt by Lessor of Lessee's exercise of the Option to Purchase, or (ii) one hundred twenty (120) days after the Start Date, Lessee shall have the right to conduct due diligence investigations of the Premises as Lessee deems appropriate, including surveying and physical inspections of the Premises ("Inspections"). Lessor shall allow Lessee reasonable access to the Premises for purposes of performing the Inspections. Lessee shall pay the costs of any and all Inspections and not permit or allow any mechanic's lien against the Premises. If any part of the Premises is or has been damaged or excavated by Lessee or Lessee's agents or representatives, Lessee shall return the

Premises to its condition immediately prior to such damage or excavation if Closing does not occur.

- d. Lessee shall obtain a title search of the Premises. If the title search discloses restrictions, encumbrances, defects, irregularities, or other matters that prevent Lessor from conveying good and marketable title to the Premises to Lessee, subject to the lien for the real estate taxes or other governmental assessments not yet due or payable, and other title matters which do not substantially affect the marketability of title to the Premises, Lessee is entitled to (i) terminate this agreement without any further obligation; (ii) negotiate a period of time during which Lessor may elect to reasonably attempt to cure the objectionable matter; or (iii) proceed to Closing.
- e. The Closing shall occur at the Morgantown office of Spilman, Thomas & Battle, PLLC, on a date and time agreed to by the Lessee and Lessor ("Closing Date"). The following shall occur at or before Closing:
 - (1) Lessor shall deliver to Lessee a General Warranty Deed, subject to the lien for the real estate taxes or other governmental assessments not yet due or payable, and other title matters which do not substantially affect the marketability of title to the Premises, for the Premises and Lessor shall be responsible for all costs associated with preparing the deed.
 - (2) Lessee shall pay to Lessor the Purchase Price, less a gift-in-kind from Lessor to Lessee of Five Hundred Thousand Dollars (\$500,000) and less a credit for the sum of all Rent paid by Lessee to Lessor ("Net Purchase Price"). Accordingly, at or prior to Closing, Lessee will cause to be paid, by certified check or by wire transfer, the Net Purchase Price. Lessee's counsel will make the disbursements contemplated herein and otherwise required by law.
 - (3) Lessor shall pay the 2017 real estate taxes and shall escrow 125% of the 2017 face value real estate taxes sufficient to cover the cost of the 2018 real estate taxes. A formal escrow agreement shall be signed by the parties at the Closing. The 2018 taxes shall be paid prior to September 1, 2018, and any escrowed funds that go unused shall be returned to the Lessor. In the event that Closing occurs on or after July 1, 2018, then the obligation in this subsection shall apply to the 2018 and 2019 real estate taxes, respectively. . However any increase in the real estate taxes due to the use of Lessee or Tenant and/or any improvements made by Lessee or Tenant, shall not be the responsibility of Lessor, and shall be paid by Lessee or Tenant.

- (4) Any liens and encumbrances required to be satisfied by Lessor shall be paid at or before completion of Closing, from the Purchase Price if sufficient net proceeds, or if not, from some other source.
- (5) Lessor shall be responsible for paying attorney's fees incurred by Lessor; and Lessee shall be responsible for paying attorney's fees incurred by Lessee.
- (6) Lessor and Lessee shall cooperate to provide such additional documents as are customary in connection with the sale of commercial property in the State of West Virginia and all settlement documents as the escrow agent, legal counsel for either party, or any such title company providing title insurance to Lessee may reasonably require.

6. INTENTIONALLY DELETED.

7. MANAGEMENT OF LEASE

The Lessor and the Tenant's Representative are encouraged to discuss matters relative to the occupancy, finance, repair, and maintenance of the Premises directly; however, the Lessee should be contacted if changes are needed to the Lease, renewal, termination or financial issues or if either party is unresponsive to the other.

8. UTILITIES AND OTHER RELATED SERVICES

The Lessee covenants that the Tenant, at its expense, shall furnish and provide payment to the applicable company or vendor, to the extent necessary, all electricity, gas, water, sewage, trash removal, custodial, maintenance including mowing, landscaping, and snow removal from walkways, roads, and parking areas. If Lessee or Tenant fails to pay any charge for any utility or service payable by Lessee or Tenant hereunder, Lessor may elect to pay the same and shall have the right to collect the same and any expense incurred by Lessor in connection therewith from Lessee or Tenant by exercising all remedies provided by law and provided herein for collection of rent. Lessor shall not be liable for any such discontinuance and the same shall not constitute a termination of this Lease, or eviction, constructive or otherwise.

9. MAINTENANCE

The Lessee covenants that the Tenant binds itself to maintain the Premises, which includes the facility and grounds, in a good and tenantable condition equal to that of the Premises as at the time possession thereof is delivered to the Lessee/Tenant.

10. INTENTIONALLY DELETED.

11. INSURANCE

The Lessee and Tenant are insured through the West Virginia Board of Risk and Insurance Management (BRIM) in the amount of One Million Dollars (\$1,000,000) combined single limits per occurrence. The Lessee agrees to supply and deliver to the Lessor, a Certificate of Insurance evidencing the required liability insurance coverage. Lessee and Tenant agree to name Lessor as an additional insured.

12. SUITABILITY OF PREMISES.

The Lessor warrants the Premises to be suitable for use by Lessee and Tenant's golf team.

- a. Environmental. The Lessor represents and warrants to the Lessee and Tenant, to the best of its actual knowledge, that there are no hazardous or unsafe substances in, on or under the Premises, or the underlying real property, and agrees to indemnify, defend and hold harmless the Lessee and Tenant, its affiliates, and their respective officers, agents and employees, against any and all claims, damages, costs, liabilities and expenses, including attorneys' fees, resulting from a breach of the Lessor's representations and warranties as of the Start Date.
- b. Compliance with Laws. Lessee and Tenant shall comply with all applicable laws, rules, orders, directions, regulations and requirements of applicable agencies pertaining to Tenant's use of the Premises during the term of the Lease. Lessee and Tenant agree to immediately notify Lessor of Lessee or Tenant's receipt of any communication from any governmental entity regarding any concerning use of the Premises or any change in Lessee's or Tenant's operation on the Premises which will change or has the potential to change Lessee's and Tenant's obligations or liabilities under any of the applicable laws. To the extent applicable Lessee covenants that Tenant will be compliant with all such factors. To the extent allowed by law, Lessee shall indemnify, defend and hold Lessor and Lessor's owners, directors, officers, employees, agents, successors, and assigns harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses that arise during or after the term of the Lease as a result of the violation of any laws, including but not limited to applicable environmental laws and any release or presence of hazardous materials.

13. LESSEE OR TENANT IMPROVEMENTS. The Lessee or Tenant, at its sole cost and expense, and in good and workmanlike manner, construct improvements, additions or installations in and to the Premises in order to conform the Premises to its intended use; provided, however, Lessee and Tenant first obtain consent from Lessor, which consent shall not be unreasonably withheld. If Lessor consents, all such improvements, additions and installations in and to the Premises shall become part of the Premises as the time of their installation and shall remain in or upon the Premises at the expiration or termination of this Agreement without compensation or credit to

Lessee or Tenant; provided, however, that Lessee and Tenant may remove any trade fixtures used by Lessee or Tenant in connection with its use of the Premises on the condition that Lessee and Tenant shall repair any damage to the Premises arising from such removal. Lessee and Tenant shall keep the Premises free, clear and discharged of any and all mechanics and materialmen liens, claims and encumbrances.

14. NEGLECT OF PREMISES

The Lessee covenants that it shall not commit waste on the Premises herein leased, and the Premises will be returned to the Lessor at the termination of this Lease in substantially as good condition as at the commencement thereof, damages from reasonable wear and tear, natural elements, normal depreciation and decay excepted.

15. TRANSFER OR ASSIGNMENT OF LEASE

- a. The Lessee shall have the right to assign or transfer this Lease; provided, however, Lessor must first consent to the proposed assignment or transfer and use of the Premises, which consent shall not be unreasonably withheld, and any such attempts at assigning or subletting without Lessor's consent shall be null and void. Consent by Lessor to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. .
- b. The Lessee may, at its option, reassign this Lease and the Premises to another WVU department/unit other than the Tenant named herein; provided, Lessor must first consent to the proposed assignment or transfer and use of the Premises, which consent shall not be unreasonably withheld, and any such attempts at assigning or subletting without Lessor's consent shall be null and void. Consent by Lessor to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.
- c. Lessor may assign this Lease with notice to Lessee, with the understanding that any such assignment shall be in accordance with the same terms and conditions herein.
- d. Upon any assignment or transfer of this Lease, Lessee's Option to Purchase shall survive.

16. SUBORDINATION AND NONDISTURBANCE

- a. Subordination and Nondisturbance. The Lessor shall have the right to place upon the underlying real property any mortgages which the Lessor or its lender(s) deem advisable. Such mortgages shall have priority over this Lease and the Lessee's and Tenant's rights hereunder. At the

Lessor's request, the Lessee shall execute any and all instruments, the form of which must conform to the State of West Virginia's Constitution and laws, necessary to subordinate this Lease to any such mortgages, provided that each such mortgagee executes a non-disturbance agreement which provides that so long as the Lessee or Tenant is not in default of this Lease, Lessee's and Tenant's right to possession of the Premises and other rights under this Lease, including, without limitation, any options to renew, rights of first refusal, and right to terminate, shall not be affected or disturbed by the mortgagee in the exercise of any of its rights or remedies against the Lessor, nor shall the Lessee or Tenant be named as a party defendant to any foreclosure of the lien or mortgage. Furthermore, the Lessee shall, within thirty (30) days after receipt of a request therefore, execute and deliver to the Lessor an estoppel certificate setting forth the name of both the Lessee and Tenant, the date of this Lease, a description of the Premises and the Rent payable therefore, certifying that this Lease is in full force and effect, and certifying that the Lessor is not in default of this Lease or specifically enumerating any outstanding events of default by the Lessor.

- b. Attornment. In the event that the Lessor's mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in its mortgage, the Lessee agrees to attorn to such transferee as its new Lessor via an agreement in conformance with the State of West Virginia's Constitution and laws, and this Lease shall continue in full force and effect as a direct lease between the Lessee and such transferee, upon all of the terms and conditions contained herein.

17. DEFAULT

In the event any party defaults in any of the covenants contained herein, the requesting party shall notify the other, in writing, of such default and if such default is not corrected within fifteen (15) days after receipt of notification, unless a shorter correction period is required elsewhere in this Lease, the requesting party may notify the other party that the Lease is terminated, without further obligation, and reenter/vacate the Premises herein leased.

18. TAXES AND ASSESSMENTS

The Lessor will pay taxes and assessments levied on the Premises during the Term of this lease.

19. TOBACCO FREE FACILITY

The Lessor agrees to assist the Lessee and Tenant in maintaining the Premises as a tobacco free environment in accordance with the policy of the Lessee. Lessee has implemented a tobacco free policy to provide a smoke-free and tobacco-free environment for the University community. Smoking or use of any tobacco or other

similar products is prohibited in all buildings, facilities, and lands of Lessee and applies to all locations including each branch campus, each off-campus location, and to the leased Premises under the tenancy of Lessee. The Premises shall be tobacco free, but if the entire facility containing the Premises is not capable of same, the Lessor agrees to assist the Lessee and Tenant in minimally designating one tobacco free entrance/exit, if at all possible.

20. INTENTIONALLY DELETED.

21. PROVISIONS FOR IMMEDIATE TERMINATION

In addition to the other events set forth herein which permit the immediate termination of this Lease, pursuant to provisions of W.Va. Code §18B-19-12 (e) (1), the Lessee shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty (30) days prior to the last day of the succeeding month,

It is further agreed by and between the parties hereto that this Lease shall be considered canceled, pursuant to provisions of W.Va. Code §18B-19-12 (e) (2), without further obligation on the part of the Lessee, if, as determined by the Lessee, Lessee's granting source, Tenant's granting source, West Virginia State Legislature, or the Federal Government should subsequently fail to appropriate sufficient funds therefor, or should otherwise act to impair this lease or cause it to be canceled, or in the event it shall become unlawful for the Premises to be used. In any event aforementioned, the Lessee may immediately redeliver possession of the Premises to the Lessor and thereupon be relieved from any and all obligations hereunder or concerning the Premises except for rent accruing prior to such date of redelivery.

22. INTENTIONALLY DELETED.

23. MISCELLANEOUS

- a. Notices. Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

Lessor

ACAP, LLC
Attn: Brian Petitto or Jason
Robbins
P.O. Box 758
Morgantown, WV 26507-0758
Phone: 304-292-3936
Fax: 304-292-6023
Email: bpetitto@petittomule.com;

Lessee

WVU Real Estate
Attn: Susan McCollum
P. O. Box 6555, 48 Donley Street
Morgantown, WV 26506-6555
Phone: 304.293.2864
Fax: 304.293.7156
Email: susan.mccollum@mail.wvu.edu

Tenant

WVU ATHLETICS
Attn: Steve Uryasz
3450 Monongahela Blvd.
Morgantown, WV 26506-0877
Phone: 304.293. 5682
Fax: 304.
Email: Steven.Uryasz@mail.wvu.edu

jason.robbins@petittomule.com
After Hours Emergency Phone:
304-692-8478

After Hours Emergency Phone:
304- -290-7559

- b. Quiet Enjoyment. The Lessor covenants that at the Start Date of this Lease, the Lessor was seized of said Premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever and that upon payment of the rentals as herein set forth, the Lessor will warrant and defend the title of the Lessee against any and all claims whatsoever, not arising hereunder, during the term of this Lease; that the Lessee and Tenant shall, at all times during the term of this Lease, peaceably and quietly have, hold, and enjoy the Premises.
- c. Force Majeure. If either party shall be delayed in the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, riots, insurrections, wars, catastrophic events or other reasons beyond the reasonable control of such party, then performance of such act shall be extended for a period equivalent to the period of such delay.
- d. Authority. The Lessor hereby represents and warrants that it owns the building and underlying real property in fee simple. Each party represents and warrants that it is fully authorized to execute this Lease without obtaining the consent of any third party.
- e. Binding Effect. All the terms and conditions of this Lease shall be binding upon and inure to the benefit of legal representatives, successors, and assigns of the parties.
- f. Modification. This Lease shall not be amended or modified in any respect except by a writing which is duly executed by all parties.
- g. Construction. The language used in this Lease was mutually negotiated by the parties and shall not be construed for or against either party. The headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way defining, limiting, modifying or amplifying the provisions hereof. Time is of the essence of this Lease and of every term, covenant, and condition hereof.
- h. Severability. If any provision of this Lease is rendered void or invalid by the decision of any court or by the enactment of any Law, such provision will be deemed to have never been included herein and the remainder of the Lease shall continue in full force and effect.
- i. Entire Agreement. This Lease constitutes the entire understanding between the parties. Any representation, obligation, term or condition not contained herein is not binding on the parties.

- j. Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and which taken together, shall constitute one and the same Lease.

[Remainder of Page Left Blank Intentionally; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of lease.

LESSOR:

ACAP, LLC

By *Brian Petitto*
BRIAN PETITTO
Its: Managing Member

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

I Amber K. Squires, notary public in and for said county and state, do hereby certify that Brian Petitto, who as Managing Member signed the foregoing lease for ACAP, LLC, Lessor, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said limited liability company.

Given under my hand this 27th day of December, 2017.

My commission will expire November 12 2018.

Amber K. Squires
NOTARY PUBLIC
OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
AMBER K. SQUIRES
25 Blaney Hollow Road
Morgantown, West Virginia 26503
My Commission Expires Nov 12 2018

LESSEE:

WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS, on behalf of
West Virginia University;
E. Gordon Gee, President

By 
James Robert Alsop
Vice President
Strategic Initiatives

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

I Melissa A. Patterson, notary public in and for said county and state, do hereby certify that James Robert Alsop who, as Vice President for Strategic Initiatives, signed the foregoing lease for the West Virginia University Board of Governors on behalf of West Virginia University, Lessee, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said agency.

Given under my hand this 28th day of December, 2017.

My commission will expire March 17, 2019.


NOTARY PUBLIC



AMENDMENT ONE TO CONTRACT OF LEASE

THIS AMENDMENT ONE TO CONTRACT OF LEASE ("Amendment"), made November 8, 2018, by and between ACAP, LLC, a West Virginia limited liability company, hereinafter referred to as "Lessor," and the West Virginia University Board of Governors on behalf of West Virginia University ("WVU"), a state agency, hereinafter also referred to as "Lessee."

WHEREAS, Lessor and WVU entered into that certain Contract of Lease ("Lease") dated December 15, 2017 for 95.55 acres known as White Day Golf Course;

WHEREAS, the Lease is necessary for the proper function of the WVU Department of Intercollegiate Athletics, on behalf of WVU's golf team, hereinafter referred to as "Tenant;" and

WHEREAS, both parties desire to extend the Term of the Lease and clarify arrangements for taxes.

NOW THEREFORE, in consideration of the full and complete performance of the covenants, terms, and provisions contained herein, the Lessor and Lessee agree to the following:

1. Section 1(d), Initial Term of Lease, and Section 3, Term, are modified to reflect that end date of the Lease shall be extended to midnight on June 30, 2019. For the avoidance of doubt, the Option to Purchase set forth in Section 7 of the Lease remains in effect and WVU may exercise the Option to Purchase on or before June 30, 2019.
2. Section 7(e)(3), shall be deleted and replaced with the following:

Lessor shall pay the 2018 real estate taxes and shall escrow 125% of the 2019 face value of the real estate taxes sufficient to cover the cost of the 2019 assessment. A formal escrow agreement shall be signed by the parties at the Closing. The 2019 taxes shall be paid prior to September 1, 2019, and any escrowed funds that go unused shall be returned to the Lessor. In the event that Closing occurs on or after July 1, 2019, then the obligation in this subsection shall apply to the 2019 and 2020 real estate taxes, respectively. However, any increase in the real estate taxes due to the use of Lessee or Tenant and/or any improvements made by Lessee or Tenant, shall not be the responsibility of Lessor, and shall be paid by Lessee or Tenant.

3. All other terms and conditions of the Lease shall remain.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this Amendment.

LESSOR:

ACAP, LLC

By *Brian Petitto*

BRIAN PETITTO

Its: Managing Member

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

I Amber K. Squires, notary public in and for said county and state, do hereby certify that Brian Petitto, who as Managing Member signed the foregoing Amendment for ACAP, LLC, Lessor, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said limited liability company.

Given under my hand this 8th day of November, 2018.

My commission will expire November 12 2023.

Amber K. Squires
NOTARY PUBLIC
OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
AMBER K SQUIRES
25 Blaney Hollow Road
Morgantown, West Virginia 26508
My Commission Expires Nov 12, 2023

LESSEE:

WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS, on behalf of
West Virginia University;
E. Gordon Gee, President

By 
James Robert Alsop
Vice President
Strategic Initiatives

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

I Melissa A. Patterson, notary public in and for said county and state, do hereby certify that James Robert Alsop who, as Vice President for Strategic Initiatives, signed the foregoing Amendment for the West Virginia University Board of Governors on behalf of West Virginia University, Lessee, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said agency.

Given under my hand this 17th day of December, 2018.

My commission will expire March 17, 2019.


NOTARY PUBLIC

