

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MORGAN COUNTY COMMISSION
AND
ECONOMIC DEVELOPMENT AUTHORITY OF MORGAN COUNTY
FOR THE MARKETING, SALE/TRANSFER OF
GREEN STREET ELEMENTARY SCHOOL/COMMUNITY CENTER BUILDING**

This memorandum of understanding (MOU) made this 2nd day of May, 2018, by and between the Morgan County Commission (hereafter MCC), and the Economic Development Authority of Morgan County (hereafter EDA), hereby establishes the framework and individual responsibilities that will govern both parties' collaborative effort to sell/transfer the Green Street Elementary School/Community Center Building and the lot on which it is located (hereafter Property).

- I. Whereas, both parties acknowledge and agree to the following conditions:
 - A. That by virtue of the MCC's formal acceptance at the April 18, 2018 Commission meeting, of the Release by the Morgan County Board of Education (hereafter BOE), dated February 6, 2018, of the MCC from the conditions of the so called "reverter clause" contained in the Deed that transferred ownership of the above Property to the MCC, dated the 28th day of November, 1977, and recorded in the Office of the MCC in Deed Book 101 as Page 103, whereby in the event that the Property ever ceases to be used by the MCC as a County facility or for County purposes, it shall revert back to the BOE; that legal ownership of the property now lies solely with the MCC until such time as the MCC transfers ownership of the Property to another party; and that the BOE is not entitled to and will have no claim for any proceeds from the sale of the Property.
 - B. That as sole owner of the Property, the MCC is responsible for the management and maintenance of the Property until such time as the MCC transfers ownership of the Property to another party; and the EDA has no responsibility for maintenance or management but shall function only as a representative entity of the MCC to effectuate the sale.
 - C. That as of the above date, the Property houses various community organizations (hereafter Tenants) with the permission, and to varying degrees financial support of the MCC; that as such the MCC is solely responsible for all issues related to the occupancy of the Property by said Tenants until such time as the MCC transfers ownership of the Property to another party;
 - D. That the Property's location is such that considerable benefit may accrue to the MCC, EDA and the community in general by improving the current condition of the Property or converting the Property from its current use;
 - E. That because the cost of improvement and/or conversion of the Property is not an undertaking that the resources of the MCC would allow, it is the opinion of the MCC that the Property should be transferred to another governmental entity or private third party;
 - F. That it is the opinion of the MCC that the EDA is the entity best suited to market the Property; identify, engage, evaluate and negotiate with potential Buyers/Transferees; and ultimately to sell/ transfer the Property to a Buyer/Transferee;

G. That the Tenants currently housed in the Property provide valuable services to the Morgan County community.

II. Both parties agree to the following:

- A. To cooperate and support one another in the marketing and sale/transfer of the Property to a Buyer/Transferee;
- B. In selling/transferring the Property, in order of priority, seek to:
 - i. Achieve the greatest benefit to the community in terms of using the Property to meet community needs, and enhancing the aesthetic appearance of the area;
 - ii. Alleviate the County's financial and legal responsibilities for the use of the Property;
 - iii. Generate sufficient revenue for the EDA to reasonably compensate them for their effort and expense in marketing and selling/transferring the Property;
 - iv. Provide reasonable notice to the Property's current Tenants so that they may make arrangements to transfer their assets and operations to another location; or, if agreed to by the Buyer/Transferee, remain in their current location per the terms and conditions set by the Buyer/Transferee.
- C. The MCC will engage the EDA on an exclusive basis to market the Property for a period of 12 months from the date this MOU is executed, with an option to renew for an additional 12 months beyond the one year anniversary date if and to the extent that both parties agree; and thereafter on a non-exclusive basis if and to the extent that both parties agree;
- D. The MCC will not seek to circumvent the EDA and market, sell/transfer the Property directly to a Buyer/Transferee;
- E. At the time EDA identifies and agrees to terms for the sale/transfer of the Property to a suitable Buyer/Transferee, the MCC will transfer ownership of the Property to the EDA for the sole purpose of facilitating the sale/transfer of the Property to the Buyer/Transferee;
- F. Any net proceeds generated from the sale of the Property will be distributed solely to the EDA to be used in its general fund;
- G. Until such time as the MCC transfers ownership of the Property to EDA, the MCC will have sole legal and financial responsibility for the Property and its Tenants;
- H. Upon sale/transfer of the Property to a Buyer/Transferee, the MCC will be relieved of any legal or financial responsibilities for the Property and its Tenants unless agreed to by the MCC as part of the sale/transfer of the Property to the Buyer/Transferee.

III. Responsibilities of the MCC

- A. Maintain the Property at its current level of structural/operational soundness and physical appearance until the ownership of the Property is transferred to another party;
- B. Memorialize the terms and conditions of occupancy by the current Tenants of the Property in the form of a binding lease with each Tenant, to be executed as soon as possible, but no more than 60 days from the date of execution of this MOU. Said leases will be on a month to month basis, with reasonable (no less than 120 days) notice to Tenants to vacate the Property;
- C. Approve no new Tenants to occupy or use the Property retroactive to March 1, 2018;
- D. Support EDA efforts to market the Property by allowing reasonable access to the Property by EDA, its recognized agents, and prospective Buyers/Transferees, with reasonable advance request by EDA;

- E. Prior to transferring ownership to the EDA, provide all assurances needed by the EDA to establish with prospective Buyers/Transferees, its authority to market the Property on behalf of the MCC; eventually take ownership of the Property from the MCC; and sell/transfer the Property to a Buyer/Transferee in its own right;
- F. Once the EDA notifies the MCC that it has a Buyer/Transferee ready to purchase/take ownership of the Property, act in a timely manner to fulfill all MCC legal requirements related to the transfer of the Property; and upon approval, transfer the ownership of the Property to the EDA for the sole purpose of sale/transfer of the Property to a suitable Buyer/Transferee;
- G. Comply with all binding requirements agreed to by the MCC that might be part of the terms and conditions of EDA's sale/transfer of the Property;
- H. Comply with all requirements of West Virginia Code regarding the sale/transfer of county property by the MCC to another party, including presenting the anticipated sale/transfer of the Property to the MCC for approval in a public meeting;

IV. Responsibilities of the EDA

- A. Market the Property by itself or through a realtor, for whom the MCC retains the right to accept or reject any realtor proposed by the EDA, as a priority activity of the EDA for the period stipulated in Section II.C above;
- B. Report progress on efforts to market the Property to the MCC on a bi-monthly basis for the period stipulated in Section II.C above;
- C. Perform all due diligence in researching the suitability and solvency of any interested Buyer/Transferee;
- D. Develop terms and conditions that within reason require any Buyer/Transferee to develop, rehabilitate, restore and/or otherwise utilize the Property in accordance with the priorities set forth in Section II.B above; as well as to be in compliance with all relevant state and local statutes;
- E. Develop terms and conditions that require a Buyer/Transferee to honor the terms and conditions of the leases the MCC executes with the current Tenants of the Property;
- F. The Property shall not be subdivided without the expressed written consent of the MCC.
- G. At the appropriate date and time, take legal title to the Property from the MCC for the sole purpose of immediate sale/transfer of the Property to a suitable Buyer/Transferee;
- H. Unless agreed upon by the MCC before the sale/transfer of the Property to the EDA, not commit the MCC to any legal or financial responsibilities regarding the Property or its current Tenants after the sale/transfer of the Property to the Buyer/Transferee.

V. Periodic Review

All parties agree to review progress and issues regarding this project on an as needed basis.

VI. Resolution of Disputes

In the event a dispute should arise concerning this MOU, each party agrees to notify the other of its grievance(s) in writing. Both parties agree to attempt to settle any disputes or grievances through good faith negotiation in a series of at least three meetings. Should that process fail to resolve the dispute the parties agree to formally mediate the matter in the State of

West Virginia with a single mediator agreed to by both Parties. Should mediation fail to settle the dispute, then the parties are free to otherwise exercise their legal rights in West Virginia.

VII. MISCELLANEOUS

- A. This MOU does not create a partnership nor a joint venture, and no party has authority to bind the other.
- B. This MOU is governed by the laws of the State of West Virginia.
- C. This MOU may be amended by the mutual agreement of all parties upon thirty (30) day advance written notice to the other parties.

DISSEMINATION OF THIS STATEMENT

The terms of this MOU will be disseminated to the appropriate personnel of all entities. All parties shall retain signed originals of this document.

Agreed to this 2nd day of May, 2018.

MORGAN COUNTY COMMISSION



Joel Tuttle
President, Morgan County Commission

MORGAN COUNTY ECONOMIC DEVELOPMENT AUTHORITY



Daryl Cowles
Executive Director, Morgan County Economic Development Authority