

Shannon N. Mundell  
West Virginia University  
Director of Real Estate  
979 Rawley Lane  
PO Box 6572  
Morgantown, West Virginia 26506-0610

October 13, 2010

West Virginia Legislature  
Joint Committee on Government and Finance  
Building 1, Room W-329  
1900 Kanawha Blvd., E.  
Charleston, West Virginia 25305

*Re: West Virginia University request for approval pursuant to West Virginia Code §18B-19-13*

Dear Joint Committee on Government and Finance,

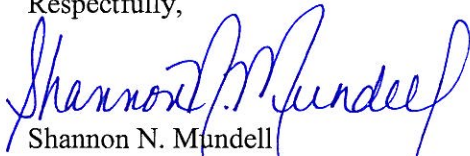
Pursuant to West Virginia Code Section 18B-19-13, appended for your review please find a copy of that certain Real Estate Purchase Agreement, dated September 22, 2010, by and between SBS Properties, L.L.C, a West Virginia limited liability company, and West Virginia University Board of Governors, on behalf of West Virginia University, along with a report setting forth a detailed summary of the terms of the agreement, including the name of the property owner and agent involved in the sale, if any.

In this Agreement, West Virginia University Board of Governors, on behalf of West Virginia University, agrees to purchase from SBS Properties, L.L.C, that certain real property located and situate in the Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, together with all easements, appurtenances and rights relating thereto, and having a street address of 992 Elmer Prince Drive, for the agreed upon sum of Three Million Seven Hundred Fourteen Thousand Eight Hundred Dollars (\$3,714,800.00).

Pursuant to West Virginia Code Section 18B-19-13(c), the attached copy of the agreement and report is 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 above-referenced agreement 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 992 Elmer Prince Drive, Morgantown, West Virginia  
by  
West Virginia University Board of Governors, on behalf of West Virginia University

By that certain Real Estate Purchase Agreement dated September 22, 2010, West Virginia University Board of Governors, on behalf of West Virginia University, has agreed to purchase from SBS Properties, L.L.C, that certain real property located and situate in the Seventh Ward of the City of Morgantown, Monongalia County, West Virginia, being 0.406 acres, for the agreed upon sum of Three Million Seven Hundred Fourteen Thousand Eight Hundred Dollars (\$3,714,800.00), payable as follows:

At closing and upon delivery of that certain deed	\$397,400.00
Installment Payment 1: November 30, 2011	\$368,600.00
Installment Payment 2: November 30, 2012	\$368,600.00
Installment Payment 3: November 30, 2013	\$368,600.00
Installment Payment 4: November 30, 2014	\$368,600.00
Installment Payment 5: November 30, 2015	\$368,600.00
Installment Payment 6: November 30, 2016	\$368,600.00
Installment Payment 7: November 30, 2017	\$368,600.00
Installment Payment 8: November 30, 2018	\$368,600.00
Installment Payment 9: November 30, 2019	\$368,600.00

The property is more particularly designated as Parcel 76.2 on Tax Map 6 of such county and state, together with all easements, appurtenances and rights relating thereto, having a street address of 992 Elmer Prince Drive, and more particularly described as set forth in that deed of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1277, at Page 293.

West Virginia University Board of Governors, on behalf of West Virginia University, has the right on or before the above-referenced installment payments to pay in full all remaining installment payments. The property will be subject to a non-recourse Vendor's Lien in favor of SBS Properties, L.L.C that may be satisfied only by enforcing such vendor's lien upon non-payment of any installment payment with such failure of payment continuing for a period of fifteen (15) days after notice of such default.

Consummation of the acquisition is contingent upon the following: i) Title examination performed by West Virginia University, ii) Due diligence performed by West Virginia University, iii) Approval by the West Virginia University Board of Governors, iv) Approval by the West Virginia Attorney General, and v) Approval by the Joint Committee on Government and Finance.

Upon receipt of all approvals, the closing of such sale will occur on or before November 30, 2010. No agent was involved in this acquisition.

## REAL ESTATE PURCHASE AGREEMENT

22<sup>nd</sup> THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made this day of, September 2010, by and between **WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS**, on behalf of WEST VIRGINIA UNIVERSITY, an agency and higher education institution of the State of West Virginia ("PURCHASER"), and **SBS PROPERTIES, L.L.C.**, a limited liability company organized under the laws of the State of West Virginia located at 1758 Mileground Road, Morgantown, WV 26505 ("SELLER").

WITNESSETH: That, for and in consideration of 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. **DESCRIPTION OF PROPERTY:** SELLER agrees to sell that certain lot or parcel of real property being 0.406 Ac & R/W located and situate in the Seventh Ward, City of Morgantown, Monongalia County, West Virginia, together with the improvements thereon, appurtenances and affixtures thereto, and more particularly designated as Parcel 76.2 of Tax Map 6 of such county and state, and more particularly described as set forth in that deed of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1117, at Page 293 (collectively, "Property"). The street address of the Property is 992 Elmer Prince Drive, Morgantown, WV.
2. **PURCHASE PRICE:** PURCHASER agrees to pay to SELLER for the Property the sum of Three Million Seven Hundred Fourteen Thousand Eight Hundred Dollars and Zero Cents (\$3,714,800.00), payable to SBS Properties, L.L.C. as follows:

At closing and upon delivery of the deed referenced in Section 8	\$397,400.00
Installment Payment 1: November 30, 2011	\$368,600.00
Installment Payment 2: November 30, 2012	\$368,600.00
Installment Payment 3: November 30, 2013	\$368,600.00
Installment Payment 4: November 30, 2014	\$368,600.00
Installment Payment 5: November 30, 2015	\$368,600.00
Installment Payment 6: November 30, 2016	\$368,600.00
Installment Payment 7: November 30, 2017	\$368,600.00
Installment Payment 8: November 30, 2018	\$368,600.00
Installment Payment 9: November 30, 2019	\$368,600.00

The PURCHASER will bring a check in the amount of Three Hundred Ninety-Seven Thousand Four Hundred Dollars and Zero Cents (\$397,400.00) made payable to SELLER to the closing. The SELLER agrees to endorse the check to Spilman Thomas & Battle, PLLC, who will deposit the check into its real estate trust account and make the appropriate disbursements for closing costs and net proceeds.

3. **OPTION:** SELLER agrees that PURCHASER shall have the right on or before the due date of any Installment Payment to pay in full all remaining Installment Payments, including the current Installment Payment. If PURCHASER elects to exercise this option, the SELLER agrees that the payoff amount then due and owing shall be in the amount as listed below:
- November 30, 2011 the amount due and owed shall be \$2,750,900;
  - November 30, 2012 the amount due and owed shall be \$2,488,950;
  - November 30, 2013 the amount due and owed shall be \$2,213,900;
  - November 30, 2014 the amount due and owed shall be \$1,925,100;
  - November 30, 2015 the amount due and owed shall be \$1,621,850;
  - November 30, 2016 the amount due and owed shall be \$1,303,400;
  - November 30, 2017 the amount due and owed shall be \$969,100;
  - November 30, 2018 the amount due and owed shall be \$618,000.
4. **NONAPPROPRIATION:**
- SELLER understands and agrees that performance of this Agreement extends beyond the current fiscal year (ending June 30) of Grantee and Grantor acknowledges that financial obligations of Grantee payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available. In the event funds are not appropriated, budgeted or otherwise available for the Installments, the Grantor understands and agrees that all remaining Installment(s) become void and of no effect after June 30 and Grantor's remedies shall be as set forth in Section 5.
5. **VENDOR'S LIEN PROVISION:** The parties hereby understand and agree that the Property described herein shall be subject to a non-recourse Vendor's Lien in favor Grantor that may be satisfied by the Grantor only by enforcing its vendor's lien reserved upon the Property and upon non-payment of any Installment Payment(s) pursuant to Paragraph 2 and such failure of payment continuing for a period of fifteen (15) consecutive days after receipt by Grantee of written notice of such default sent to 105 Stewart Hall, P. O. Box 6201, Morgantown, WV 26506-6201, attention Vice President for Legal Affairs and General Counsel. In the event Grantee fulfills all obligations herein relating to the Installment Payment(s) due and payable to Grantor, Grantor agrees to provide a release, in such form as Grantee desires, stating that the Property is no longer subject to such Vendor's Lien.
6. **PURCHASER:** WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA UNIVERSITY, an agency and higher education institution of the State of West Virginia.
7. **SELLER:** SBS Properties, L.L.C., a limited liability company organized under the laws of the State of West Virginia.

8. **DEED:** Upon the fulfillment of all conditions stipulated herein to be performed by the PURCHASER, the SELLER shall convey good and marketable title to the Property to PURCHASER in fee simple, by a good and proper deed containing covenants of General Warranty, free and clear from all liens and encumbrances, except for the following, subject to which PURCHASER expressly agrees to take title: (a) any and all governmental ordinances, regulations, and restrictions; (b) applicable exceptions, reservations, covenants, restrictions, conditions, rights-of-way, easements, limitations of use, mineral severances, and other relative matters in the Property's chain of title; and (c) the reserved Vendor's Lien. Copy of the proposed deed is attached hereto as Exhibit A.
9. **CONTINGENCIES:** This Agreement is contingent upon the following terms:
- (a) PURCHASER shall have the right to have the title to the real property and improvements comprising the Property examined by PURCHASER'S legal counsel. In the event that the results of such title examination shall reveal that the SELLER does not hold a good and marketable title to such Property, or reveals items or issues unacceptable to PURCHASER, in its sole and exclusive discretion, SELLER shall be notified of the items, issues or defects of title in writing within ten days after the completion of the title examination. SELLER shall use all reasonable efforts to cure such items, issues and defects prior to the date of the consummation of the sale, and in the event that SELLER is unable to clear such items, issues or defects of title, this Agreement may be modified or canceled at the option of PURCHASER.
  - (b) Within ten (10) Business Days after the date of this Agreement, first above written, SELLER shall make available to PURCHASER and its designees all drawings, plans, permits, licenses, surveys, wetland analyses, environmental reports, and other documents in possession or control of SELLER regarding or in any manner relating to the Property.
  - (c) PURCHASER'S satisfactory completion of all due diligence inspections in and to the Property that PURCHASER, in its sole discretion, deems appropriate. Such due diligence inspections may include, but are not limited to, environmental audits, zoning review, mechanical, electrical, and structural inspections, engineering and architectural inspections, survey and confirmation of parking availability. In the event the results of the inspections disclose matters unacceptable to PURCHASER, PURCHASER shall notify SELLER and the SELLER agrees to use reasonable efforts to cure the objectionable item. In the event the SELLER is unwilling or unable to cure the objectionable item, this Agreement may be modified or canceled at the option of PURCHASER.
  - (d) The final terms and conditions of this Agreement and the deed as specified in Section 6 are subject to approval by the West Virginia University Board of Governors.
  - (e) This Agreement and the deed as specified in Section 6 are subject to approval as to form by the West Virginia Attorney General's Office.



- (f) Pursuant to W.Va. Code §18B-19-13(a) and (b), this Agreement and a report setting forth a detailed summary of the terms and conditions, including the name of the property owner(s) and the agent(s) involved in the sale, shall be provided to the Joint Committee on Government and Finance for prior review. Further, pursuant to W.Va. Code §18B-19-13(c), a copy of this Agreement and a summary report shall be provided at least thirty (30) days before any purchase. The Joint Committee on Government and Finance, pursuant to §18B-19-13(f), shall meet and review the Agreement or report within thirty (30) days of receipt. This Agreement is subject to favorable review and approval, pursuant to statutory authority, by the Joint Committee on Government and Finance.

10. **TAXES, ASSESSMENTS AND CLOSING:**

- a) PURCHASER, as a state agency, is exempt from taxation; therefore, SELLER agrees to pay (a) all real and personal property taxes due and payable for the Property for the 2010 tax year and all previous tax years, as assessed by the Monongalia County Assessor and to be collected by the Monongalia County Sheriff, and (b) all real and personal property taxes due and payable for the Property for 2011 tax year, as assessed by the Monongalia County Assessor and to be collected by the Monongalia County Sheriff. SELLER agrees to provide proof of payment of such 2010 real estate taxes to PURCHASER on or before closing. In addition, the 2011 and any future taxes assessed against the Property shall be paid in a timely manner so as to receive any discounts available, by the SELLER. If the 2011 taxes or any other future taxes on the Property are not paid by the SELLER as provided herein, the PURCHASER may deduct the amount necessary to pay such taxes from future payments due the SELLER.
- b) This closing shall be in Morgantown, West Virginia, at a location determined by PURCHASER, unless otherwise agreed upon by PURCHASER and SELLER. Furthermore, Closing shall occur on or before the date stated in Section 11 of this Agreement, unless otherwise mutually agreed upon.
- c) SELLER agrees to pay for preparation of the deed, recordation of any releases executed by creditors of SELLER and all closing costs. SELLER shall provide to PURCHASER the proposed deed within two weeks of execution of this Agreement; notwithstanding the foregoing, PURCHASER reserves the right to purchase title insurance at its own expense.
- d) SELLER shall deliver to PURCHASER, within twenty (20) business days of the date of this Agreement, as first above written, a certificate of existence from the State of West Virginia, evidencing that SELLER is a validly existing company in the State of West Virginia, along with an irrevocable resolution, in form reasonably acceptable to PURCHASER, affirming this Agreement and authorizing and directing SELLER to perform all of its obligations under this Agreement. If SELLER fails to

deliver such documentation before the expiration of such twenty (20) business day period, or upon delivery, PURCHASER is not satisfied with the items so delivered, then within five (5) business days following such delivery, PURCHASER may terminate this Agreement by notifying SELLER in writing, this Agreement shall become null and void.

11. **POSSESSION:** Possession of the Property shall be delivered to the PURCHASER on the date of the consummation of the sale with only the tenants and tenants' personal property, if any, as are identified in the leases provided pursuant to Section 7(d).
12. **RISK OF LOSS:** The risk of loss or damage to the Property by fire or other casualty shall remain with SELLER until a properly executed deed to the Property is delivered to PURCHASER.
13. **TIME OF PERFORMANCE:** Unless otherwise mutually agreed upon in writing, the sale shall be completed and the purchase money paid and all property instruments executed and delivered on or before November 30, 2010 and will be automatically extended if under review by the Attorney General or the Joint Committee on Government and Finance as contemplated in Section 6, above, provided that all contingencies as herein set forth have been fully met and satisfied.
14. **NO SHOP:** As partial but material consideration for this Agreement and the transaction subject to this Agreement as well as all related covenants and agreements under this Agreement, SELLER agrees that during the period commencing on the date of this Agreement and ending on the earlier of the Closing Date or the termination of this Agreement, SELLER will not, directly or indirectly (a) encourage, solicit or initiate discussions or negotiations with any corporation, partnership, person, entity or group, other than PURCHASER, concerning any sale of the Property, or acquisition of beneficial ownership with respect to the Property, or (b) otherwise initiate any action (unless in response to an unsolicited offer) which would prejudice the ability of PURCHASER to close under this Agreement.
15. **CONFIDENTIALITY AND PUBLICITY:** Except to the extent required or permitted by law, the provisions of this Agreement shall be held in strictest confidence by PURCHASER and SELLER and shall not be publicized or disclosed in any manner whatsoever; provided, however, that (a) the parties may disclose this Agreement, in confidence, to their respective attorneys, accountants, auditors, tax preparers, financial advisors, and other parties necessary to perform due diligence prior to closing; and (b) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.
16. **NOTICE:** Any notice required or permitted to be given by any provision of this Agreement shall be in writing, executed by the party giving such notice, and delivered by certified mail, return receipt requested, postage prepaid, addressed as follows:

Seller: SBC Properties, L.L.C.  
7158 Mileground Road  
Morgantown, WV 26505  
Attn: Steven B. Solomon, Member

Purchaser: WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS,  
on behalf of West Virginia University  
Attn: Shannon N. Mundell, Director of Real Estate  
979 Rawley Lane - PO Box 6572  
Morgantown, West Virginia 26506-6572

17. **GOVERNING LAW:** This contract shall be governed by and construed in accordance with the laws of the State of West Virginia.
18. **ASSIGNMENT:** Seller shall have the right to assign all rights and obligations in this Agreement and/or grant a security interest in all monies herein provided for, without consent of but with notice to PURCHASER.
19. **ENTIRE AGREEMENT:** This Agreement constitutes and contains all stipulations and agreements between PURCHASER and SELLER, superseding any prior written or oral agreements between them respecting the subject matter of this Agreement, and unless in subsequent writing which has been signed and dated by the parties, no representations by either of the parties other than contained in this Agreement shall be binding upon either party.
20. **SURVIVAL:** The terms, conditions, obligations, and rights set forth herein shall survive the execution of this Agreement.
21. **MODIFICATIONS:** Any provision to modify, alter, enlarge, or change this Agreement shall be in writing, signed and dated by both parties. Any such modification must be delivered in person or by certified mail to the other party.
22. **BINDING AGREEMENT:** This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon each of their respective heirs, executors, administrators, successors and assigns.



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

**PURCHASER:**

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

By: Narvel G. Weese, Jr.  
Narvel G. Weese, Jr.

Its: Vice President for Administration and Finance

**SELLER:**

SBS Properties, L.L.C.

By: \_\_\_\_\_  
Steven B. Solomon

Its: Member

APPROVED AS TO FORM PRIOR TO  
ACKNOWLEDGEMENT THEREOF, THIS

22nd day of September, 2010

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

By: Dawn E. Wayfield  
DEPUTY ATTORNEY GENERAL

APPROVED FOR  
ONE FISCAL YEAR

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

**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

**SELLER:**  
SBS Properties, L.L.C.

By: Steven B. Solomon  
Steven B. Solomon  
Its: Member

APPROVED AS TO FORM PRIOR TO  
ACKNOWLEDGEMENT THEREOF, THIS  
22nd day of September, 2010  
DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL  
By: Dawn E. Wayfield  
DEPUTY ATTORNEY GENERAL

**APPROVED FOR  
ONE FISCAL YEAR**