



Real Estate

Shannon N. Mundell
West Virginia University
Director of Real Estate
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PO Box 6555
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May 11, 2012

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 Purchase Agreement, dated April 27, 2012 by and between R. S. S. H. LLC 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 the above-referenced Seller that certain real property located and situate in Star City, Monongalia County, West Virginia, together with all buildings, improvements, easements, appurtenances and rights relating thereto, for the sum of One Million One Hundred Seventy-five Thousand Dollars (\$1,175,000.00).

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,

A handwritten signature in blue ink that reads 'Shannon N. Mundell'. The signature is fluid and cursive, written over the printed name.

Shannon N. Mundell
Director of Real Estate

cc: West Virginia Higher Education Policy Commission

REAL ESTATE PURCHASE AND SALES AGREEMENT

THIS REAL ESTATE PURCHASE AND SALES AGREEMENT (“Agreement”) is made this 27th day of April, 2012, 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 **R. S. S. H. LLC** (“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:** The property is located in the Star City, Monongalia County, West Virginia, more particularly described or identified as follows, to-wit (collectively referred to as the “Property”):

1.411 acres Brewerton Add; Tax Map 5, Parcel No. 0092.

Being the same real estate conveyed to R. S. S. H. LLC by deed dated the 17th day of July, 2008, of record in said Clerk’s Office in Deed Book 1369, at page 391.

Together with the improvements thereon, appurtenances and affixtures thereto, and more particularly described as set forth in the afore-referenced deed(s) of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia.

The Property has a street address of 3504 Monongahela Boulevard, Morgantown, W. Va.

2. **PURCHASE PRICE:**

- a) PURCHASER agrees to pay to SELLER for the Property the sum of One Million One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$1,175,000.00) (the “Purchase Price”).
- b) PURCHASER will bring a check in the amount of the Purchase Price made payable to PURCHASER’S legal counsel. PURCHASER’S legal counsel will deposit the check into its real estate trust account and make the appropriate and customary disbursements for debts owed by SELLER, closing costs of both SELLER and PURCHASER, and net proceeds (if any) to the SELLER.

3. **CLOSING AND DEED:**

- a) Unless otherwise mutually agreed upon in writing, the sale shall be completed and the purchase money paid and all necessary legal documents or instruments executed and delivered thirty (30) days following the date of execution, by all parties, of this Agreement (the "Closing Date"). The Closing Date shall be delayed and will be automatically extended if this Agreement and/or Deed remain under review pursuant to Sections 4(g), (h), or (i).
- b) The closing contemplated by this Agreement (the "Closing") shall occur in Morgantown, West Virginia, at a location determined by PURCHASER, unless otherwise agreed upon by PURCHASER and SELLER.
- c) Upon the fulfillment of all conditions stipulated herein to be performed by the PURCHASER and SELLER, the SELLER shall convey good and marketable fee simple title to PURCHASER by a good and proper general warranty deed in a form reasonably acceptable to PURCHASER (the "Deed") free and clear from all liens and encumbrances excepting the lien for the real estate taxes or other governmental assessments not yet due or payable and such other matters described in any title insurance commitment or title opinion letter obtained by PURCHASER which, in the sole opinion of the PURCHASER, do not substantially affect the marketability of title to the Property or PURCHASER'S ability to use the Property for all lawful purposes.
- d) SELLER shall, within thirty (30) business days after the date of this Agreement, provide to PURCHASER a draft of the proposed Deed.
- e) 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.

- f) SELLER agrees to pay for preparation of the Deed, recordation of any releases executed by creditors of SELLER, and any and all real estate commissions or broker's fees.

4. **CONTINGENCIES**: This Agreement is contingent upon the following terms:
- a) INTENTIONALLY DELETED.
 - b) SELLER shall, within ten (10) business days of the execution of this Agreement, prepare and deliver to PURCHASER a statement of any known defects regarding or in any way affecting the Property, as of the date that such statement is provided by SELLER.
 - c) SELLER shall, within ten (10) business days of the execution of this Agreement, 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 and any structures or buildings that are affixed to it.
 - d) SELLER shall, within ten (10) business days of the execution of this Agreement, deliver to PURCHASER, for its review and approval, all of SELLER'S current leases related to the Property, specifically the lease referenced in the Memorandum of Lease recorded in Deed Book 1383, at Page 278, between SELLER, as Lessor or Landlord, and Nikz Enterprises, Inc., as Lessee or Tenant (the "Nikz Lease").
 - i. With respect the Nikz Lease, prior to the Closing Date, SELLER shall modify and/or amend the Nikz Lease to reflect at least the following:
 - 1. A termination date thirty-six (36) months from the actual Closing Date;
 - 2. Annual rental payments of One Hundred Dollars (\$100.00) per year for a period of three (3) years; and
 - 3. To permit PURCHASER, with the prior consent of the Lessee or Tenant, which consent will not be unreasonable withheld, to utilize and benefit from the parking spaces located adjacent to and associated with the Property for vehicle parking and/or a designated drop-off location for individuals participating in activities that PURCHASER may sponsor or otherwise permit at its Women's Soccer Training Facility and Dreamswork Field located on Monongahela Boulevard, Morgantown, W. Va.
 - ii. SELLER agrees to make all other reasonable modifications or amendments to the Nikz Lease that may be requested by PURCHASER following its review of the aforementioned lease.

- e) PURCHASER shall, within a reasonable period of time following the execution of this Agreement, 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 discloses items, issues or defects in the chain of title unacceptable to PURCHASER, in its sole and exclusive discretion, SELLER shall be notified of the items, issues, or defects of title in writing after the completion of the title examination. SELLER, shall use all reasonable efforts to cure such items, issues and defects prior to the Closing Date, 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.
- f) 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.
- g) As determined by the PURCHASER, the purchase contemplated by this Agreement may be subject to formal approval by the West Virginia University Board of Governors; such approval shall be made in the Board's sole discretion and upon consideration of all facts and circumstances deemed relevant by the Board.
- h) As determined by the PURCHASER, this Agreement and the Deed may be subject to approval as to form by the West Virginia Attorney General.
- i) Pursuant to W.Va. Code §18B-19-13(a) through (c), 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 at least thirty (30) days before the Closing.
- j) 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 (or other appropriate jurisdiction), evidencing that SELLER is a validly existing company in the State of West Virginia(or other appropriate jurisdiction), 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.

- k) SELLER shall, within ten (10) business days of the execution of this Agreement, deliver to PURCHASER, for its review and approval, all agreements, contracts, or other documents, if any, related to the use or shared use of the parking areas now present on at the Property by the Econo Lodge (located immediately adjacent to the Property) or its customers.

5. **TAXES AND ASSESSMENTS:** PURCHASER, as a state agency, is exempt from taxation; therefore, SELLER, with respect to the Property, agrees to pay:

- a) All real and personal property taxes that may be due and payable for the current and all prior tax years, as assessed by the appropriate County Assessor and to be collected by the appropriate County Sheriff. SELLER agrees to provide proof of payment to PURCHASER on or before closing.
- b) All real and personal property taxes that shall be due and payable for the current tax year, as assessed by the appropriate County Assessor and to be collected by the appropriate County Sheriff.
- c) SELLER shall agree to escrow sufficient funds; to be held by PURCHASER'S legal counsel, for the sole purpose of paying in a timely any and all future taxes assessed in the name of the SELLER. To the extent that excess funds are escrowed and are not used to pay taxes, the funds shall be reimbursed to SELLER.

6. **POSSESSION:** Possession of the Property shall be delivered to the PURCHASER on the Closing Date, subject only to the Nikz Lease, as modified pursuant to Section 4(d) hereof.

7. **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.

8. **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.

9. **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.

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

SELLER: R. S. S. H. LLC
Attn: Hossein Nikzad
4673 Shadyside Lane
Morgantown, WV 26508

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

11. **GOVERNING LAW**: This contract shall be governed by and construed in accordance with the laws of the State of West Virginia.

12. **ASSIGNMENT**: PURCHASER shall have the right to assign all rights and obligations in this Agreement; provided, however, that advanced written notice will be provided to SELLER.

13. **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.

14. **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.

15. **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.

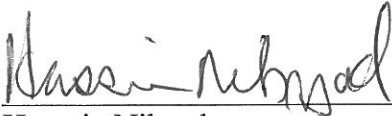
{Signature Page to Follow}

{Signature Page to Real Estate Purchase and Sales Agreement}

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

SELLER:

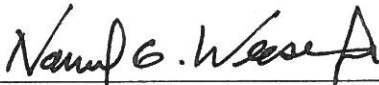
R. S. S. H. LLC

By: 
Hossein Nikzad

Its:

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

Report to Joint Committee on Government & Finance

Acquisition of 3504 Monongahela Boulevard, Morgantown, West Virginia
by
West Virginia University Board of Governors, on behalf of West Virginia University

By that certain Real Estate Purchase and Sales Agreement dated April 27, 2012, West Virginia University Board of Governors, on behalf of West Virginia University, has agreed to purchase from R. S. S. H. LLC, that certain real property located and situate in Star City, Monongalia County, West Virginia, being 1.411 acres, for the agreed upon sum of One Million One Hundred Seventy-five Thousand Dollars (\$1,175,000.00).

The property is more particularly designated as Parcel 92 on Tax Map 5 of such county and state, together with all easements, appurtenances and rights relating thereto, 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 1369, at Page 391.

Shoney's Restaurant will remain at its current location and operation for a term of three (3) years pursuant to a lease agreement. During the lease term, Shoney's Restaurant will be actively pursuing a new location within the Morgantown market for the Shoney's Restaurant. Shoney's intends to have an ongoing presence in Morgantown for many years.

Consummation of the acquisition is contingent upon the following: i) Title examination performed by West Virginia University, ii) Approval by the West Virginia Attorney General, and iii) Approval by the Joint Committee on Government and Finance. The West Virginia University Board of Governors has approved this transaction.

Upon receipt of all approvals, the closing of such sale will occur on or after June 14, 2012. No agent was involved in this acquisition.