



West Virginia University

Real Estate

May 21, 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,

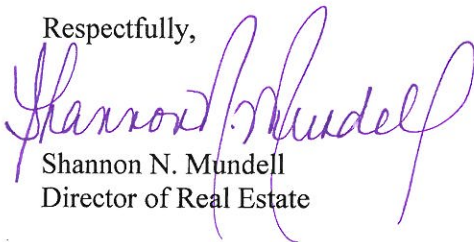
Pursuant to West Virginia Code Section 18B-19-13, appended for your review please find a copy of that certain Purchase Agreement, dated May 10, 2012 by and between Glenmark Holding Limited Liability Company and West Virginia University Board of Governors, on behalf of West Virginia University, along 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 the above-referenced Seller that certain real property located and situate in the City of Morgantown, Monongalia County, West Virginia, together with all buildings, improvements, easements, appurtenances and rights relating thereto, for the sum of Twenty-Six Million Three Hundred Eighty-five Thousand Dollars (\$26,385,000.00).

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,



Shannon N. Mundell
Director of Real Estate

cc: West Virginia Higher Education Policy Commission

Report to Joint Committee on Government & Finance

Acquisition of Suncrest Plaza Site, 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 May 10, 2012, West Virginia University Board of Governors, on behalf of West Virginia University ("WVU"), has agreed to purchase from Glenmark Holding Limited Liability Company that certain real property located and situate in the City of Morgantown, Monongalia County, West Virginia, being 5.5 acres, for the agreed upon sum of Twenty-six Million Three Hundred Eighty-five Thousand Dollars (\$26,385,000.00).

The property is more particularly designated as Parcels 69, 69.1, 69.2 and 70 on Tax Map 6 of such county and state, together with all improvements, easements, appurtenances and rights relating thereto, including approximately 100,000 square feet of premium, Class A office space and 440 parking spaces, including garage and surface ("Property"). All tenants currently leasing the Property will continue to occupy such space pursuant to the tenant's leases.

WVU is proposing to purchase the Property with West Virginia University Hospitals, Inc. ("WVU Hospitals"), as tenants-in-common. While WVU Hospitals is requesting and obtaining a final, non-appealable certificate of need ("CON") for the undivided one-half interest in the Property, WVU Hospitals will advance a purchase money loan to WVU in an amount not to exceed one-half of the purchase price. Upon WVU Hospitals' obtainment of CON, WVU will transfer an undivided one-half interest in the Property unto WVU Hospitals such that WVU and WVU Hospitals will each own an undivided fifty percent (50%) ownership in the Property as tenants-in-common.

Consummation of the acquisition is contingent upon the following: i) Approval by the West Virginia University Board of Governors, ii) Approval by the West Virginia Attorney General, iii) Approval by the West Virginia Higher Education Policy Commission, and iv) Approval by the Joint Committee on Government and Finance.

Upon receipt of all approvals, the closing of such sale will occur on or after June 21, 2012. No agent was involved in this acquisition.

REAL ESTATE PURCHASE AND SALES AGREEMENT

THIS REAL ESTATE PURCHASE AND SALES AGREEMENT (“Agreement”) is made this 10th day of May 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, its nominees, designees and assigns, (“PURCHASER”) and **GLENMARK HOLDING LIMITED LIABILITY COMPANY**, a West Virginia limited liability company (“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 those certain parcels of real estate hereinafter described for the consideration recited and subject to the following terms and conditions:

1. **DESCRIPTION OF PROPERTY:** That certain real estate located in the City of Morgantown, Monongalia County, West Virginia, more particularly described or identified on Exhibit A attached hereto and incorporated herein by this reference (collectively referred to as the “Property”).
2. **PURCHASE PRICE:**
 - a) PURCHASER agrees to pay to SELLER for the Property the sum of Twenty-Six Million Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$26,385,000.00) (the “Purchase Price”).
 - b) At or prior to closing, as defined below, PURCHASER will cause to be paid, by check or by wire transfer, Twenty-Six Million Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$26,385,000.00), to PURCHASER’S legal counsel, SPILMAN THOMAS & BATTLE, PLLC. PURCHASER’S legal counsel will deposit the check into its real estate trust account and make the appropriate disbursements for debts owed by SELLER, closing costs of SELLER, and net proceeds (if any) to 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 on or before June 30, 2012 (the “Closing Date”).
 - 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, 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, leases of tenants of the Property, and such other matters in Grantor's chain of title or described in any title insurance commitment or title opinion letter obtained by PURCHASER which, in the sole opinion of 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 fourteen (14) 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 document to which this Declaration is appended evidences 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.

- f) SELLER agrees to pay for preparation of the Deed, the cost of clearing any liens or encumbrances affecting the Property, and recordation of any releases executed by creditors of SELLER. PURCHASER shall pay for all other recording fees, financing fees, title insurance premiums, survey fees, flood certifications, appraisal fees, and all other expenses incurred by PURCHASER in preparation for Closing, including costs of all inspections or investigations of the Property. For the avoidance of doubt, PURCHASER shall not pay any commissions or fees, including such fees that may be associated with any real estate brokers or agents.
- g) At or prior to Closing, subject to a formal escrow agreement, SELLER shall deposit Two Hundred Thousand Dollars (\$200,000.00) into an escrow account maintained by an agent chosen by PURCHASER. Until December 31, 2012, the escrow funds shall be used by PURCHASER, its agents, or its assignees, for the purpose of repairing or replacing the existing heating, ventilation, and air conditioning system(s) and equipment servicing the four-story building located on the Property, to the extent necessary for items identified by Southern Air Inc above and beyond those covered under that certain Maintenance Agreement For Building Environmental Systems, dated December 2, 2011, by and between Southern Air Inc. and SELLER. PURCHASER shall not utilize said escrowed funds to pay the standard monthly services fees under said Maintenance Agreement. On or before January 10, 2013, PURCHASER shall direct the escrow agent to pay the remaining balance, as of December 31, 2012, of said escrowed funds to SELLER.

- h) PURCHASER and SELLER agree that all rents for the month of Closing (“Closing Month’s Rents”) will be pro-rated as of the date of Closing based on the actual number of calendar days in the month of Closing. To the extent either SELLER or PURCHASER collect Closing Month’s Rents, within fifteen (15) days of collection thereof, the collecting party shall remit to the other that pro-rated portion of the Closing Month’s Rents due to the other, on a tenant-by-tenant basis.

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 relating to the Property, except as to certain items regarding the existing heating, ventilation, and air conditioning system(s) and equipment servicing the four-story building located on the Property, which issues PURCHASER acknowledges have been disclosed and provided for in full by means of the escrowed funds under Section 3(g).
- c) INTENTIONALLY DELETED.
- d) SELLER shall, within ten (10) business days of the execution of this Agreement, deliver to PURCHASER, for its review all of SELLER'S current leases related to the Property.
- e) PURCHASER shall, within thirty (30) days 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 or unwilling to clear such items, issues or defects of title, this Agreement may be modified or canceled at the option of PURCHASER.
- f) As determined by 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 of Governors’ sole discretion and upon consideration of all facts and circumstances deemed relevant by the Board of Governors.
- g) As determined by the PURCHASER, this Agreement and the Deed may be subject to approval as to form by the West Virginia Attorney General.

- h) 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.
- i) SELLER shall deliver to PURCHASER, within fourteen (14) 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 fourteen (14) 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.
- j) PURCHASER, upon execution of this Agreement, shall immediately and diligently pursue obtaining all requisite internal and governmental approvals for Closing.

5. **TAXES AND ASSESSMENTS AND ACCOUNT MANAGEMENT:**

(I) PURCHASER 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 all prior tax years, as assessed by the Monongalia County Assessor and to be collected by the Monongalia 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 2012 tax year, as assessed by the Monongalia County Assessor and to be collected by the Monongalia County Sheriff.

(II) SELLER agrees to escrow sufficient funds; to be held by PURCHASER'S legal counsel, for the sole purpose of paying in a timely manner real estate taxes for the Property assessed in the name of the SELLER for the 2012 tax year. Provided, however, that to the extent that excess funds are escrowed and are not used to pay taxes, the funds shall be reimbursed to SELLER. Further, to the extent that any portion of a tenant's rent is allocated toward the payment of the 2012 real estate taxes for the Property, such allocated portion of rents shall be reimbursed to SELLER within fifteen (15) days of receipt.

(III) Subsequent to closing, SELLER and PURCHASER shall execute a standard services agreement through which SELLER agrees to provide billing management and accounting services to PURCHASER for matters related to tenants, leases, maintenance, day-to-day operations, common area expenses, services contracts, and related matters regarding the Property. In consideration of said services, PURCHASER shall pay to SELLER, on or before the fifth day of each month following said services, a fee equal to four percent of the amount of gross operating income related to the Property for the month services were provided; however, no amount of rent that is allocated for the payment of real estate taxes for the Property shall be included in the calculation of the SELLER'S fee. The contemplated services agreement shall acknowledge that either party may terminate the services agreement upon ninety (90) days written notice to the other.

6. **POSSESSION**: Possession of the Property shall be delivered to the PURCHASER on the Closing Date with only the tenants and tenants' personal property, if any as they may be identified in the leases provided pursuant to Section 4(d), present on the Property.

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. However, except as hereinafter provided, this Section does not limit, in any way whatsoever, SELLER'S right to (a) enter into agreements and otherwise conduct business necessary for the day-to-day operations of the Property, or (b) encourage, solicit or initiate discussions or negotiations, pertaining to lease agreements, with any corporation, partnership, person, entity or group concerning the leasing of space within the Property upon terms and conditions acceptable to SELLER; provided however that any modification or extension of an existing lease for a portion of the Property or any lease for currently un-leased space in the Property shall require the written consent of the PURCHASER before the same can be finalized and executed, which consent shall not be unreasonably withheld, conditioned or delayed.

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: Glenmark Holding Limited Liability Company
Attn: Mark R. Nesselroad
6 Canyon Road, Suite 300
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 not assign its rights and obligations in this Agreement without obtaining SELLER'S prior written consent; provided, that, PURCHASER shall have the right to assign this Agreement, in whole or in part, to West Virginia University Hospitals, Inc., a West Virginia non-profit corporation, and/or WVU Medical Corporation, a West Virginia non-profit corporation doing business as University Health Associates, or subject to SELLER'S approval, at its sole discretion, their respective designees, nominees or assigns. Any assignment may be subject to an assignment fee that shall be agreed to by and between such assignee and 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.

16. **REPRESENTATIONS AND WARRANTIES**: SELLER hereby represents and warrants as follows, which representations and warranties shall be true and correct as of the date

hereof and as of the date of Closing and the truth and correctness of which shall be a conditions precedent to PURCHASER's obligations to close the transaction contemplated by this Agreement:

(I) There are no existing or pending actions, suits or proceedings with respect to or affecting any aspect of any of the Property nor have any such actions, suits or proceedings been threatened or asserted, except litigation related to the heating, ventilation, and air conditioning system(s) and equipment servicing the four-story building located on the Property, as previously disclosed to PURCHASER.

(II) Seller has no knowledge of any pending or threatened condemnation, or similar proceeding affecting the Property or any portion thereof, nor has Seller knowledge that any such action is presently contemplated.

(III) Seller has no knowledge of any fact, action or condition which would result in the termination of full, free and adequate access to and from the Property and the public highways and roads in the vicinity of the Property.

(IV) To the best of the SELLER's knowledge, there are not now, nor have there ever been, any toxic or hazardous wastes, substances or related materials ("Hazardous Materials") used, generated, stored, treated or disposed of on the Property or on adjacent property in such manner or quantity so as to constitute a violation under the statutes referred to below or other applicable statutes, except as in the normal course of business for each tenant and owner of the Property which, to the best of SELLER'S knowledge was in compliance with the laws and statutes cited below. Hazardous Materials shall include, but shall not be limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Materials Act., 49 U.S.C. Sec. 1802, the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 901 et seq., and those substances similarly defined in the local and state laws of the State of West Virginia and the regulations adopted and publications promulgated pursuant to said laws.

(V) Seller is a limited liability company organized and validly existing under the laws of the State of West Virginia with all requisite power and authority to execute and deliver this Agreement and to carry out the transactions contemplated thereby.

(VI) All matters materially and adversely impacting all or any part of the Property, or the development or operation of all or any part of the Property, or with the potential to do any of the foregoing, which are known to SELLER have been disclosed to PURCHASER in writing.

(VII) The Property is zoned by the City of Morgantown as part Service Business District (B-2) and part Professional, Residential, and Office District (PRO). SELLER has no knowledge of any violation or threatened violation of any applicable zoning ordinance, statute, code, or regulation.

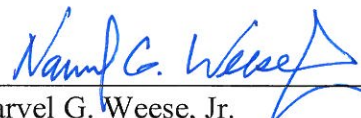
(VIII) SELLER is not aware of (a) any uncured breach of, or event of default under, any of the leases affecting all or a portion of the Property, or (b) any set of facts and circumstances which would constitute a breach thereof, or event default thereunder, but for the provision of notice and the passage of time, except as has been disclosed to PURCHASER in writing.

(VIV) SELLER has not collected any security deposits in the ordinary course of its operation of the Property.

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

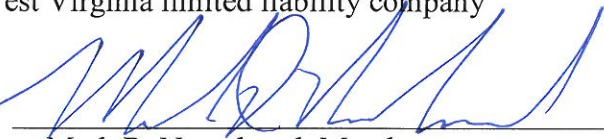
PURCHASER:

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:

Glenmark Holding Limited Liability Company,
a West Virginia limited liability company

By: 
Mark R. Nesselroad, Member

