

August 8, 2011

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 of its acquisition of "The Augusta on the Square"*

Dear Joint Committee on Government and Finance,

Pursuant to West Virginia Code Section 18B-19-13 and appended for your review, please find a copy of that certain Purchase Agreement, dated June 17, 2011 by and between Robert L. Johns, as Trustee of Each of the Bankruptcy Estates of Augusta Apartments, LLC and McCoy 6, 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. Additionally, appended please find the Order Authorizing the Sale of Assets Pursuant to 11 U.S.C. § 363(b), (f), and (m) and § 105(a) entered by the United States Bankruptcy Court for the Northern District of West Virginia on July 28, 2011.

In the Purchase Agreement, West Virginia University Board of Governors, on behalf of West Virginia University, agrees to purchase from the above-referenced Trustee that certain real property located and situate in the Fourth Ward of the City of Morgantown, Monongalia County, West Virginia, together with all buildings, improvements, easements, appurtenances and rights relating thereto for the sum of Eleven Million Dollars (\$11,000,000.00).

At a sale hearing held on July 21, 2011, the Trustee conducted an auction between an upset bidder and West Virginia University, which resulted in an increase of the purchase price from Eleven Million Dollars (\$11,000,000.00) to Thirteen Million One Hundred Thousand Dollars (\$13,100,000.00). West Virginia University was the high bidder at \$13,100,000.

Pursuant to West Virginia Code Section 18B-19-13(c), the attached copy of the agreement and report is being provided prior to the consummation of this acquisition. Although subsection (f) states that your committee will meet and review the above-referenced agreement within thirty (30) days of receipt, West Virginia University respectfully requests approval prior to August 16, 2011 due to the nature of the sale and the fact that the property rentals are dependent on West Virginia University students entering such property prior to August 19, 2011 for the fall semester. Additionally, repairs and general maintenance must be performed prior to the students entering the property, and West Virginia University desires to perform such maintenance in a timely manner.

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

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Respectfully,

Shannon N. Mundell  
Director of Real Estate

cc: West Virginia Higher Education Policy Commission

**PURCHASE AGREEMENT**

**between**

**ROBERT L. JOHNS, AS TRUSTEE OF THE BANKRUPTCY**

**ESTATES OF AUGUSTA APARTMENTS, LLC AND MCCOY 6, LLC, AS SELLERS**

**and**

**WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST**

**VIRGINIA UNIVERSITY, A STATE INSTITUTION OF HIGHER EDUCATION**

**AS PURCHASER**

**Dated as of June 17, 2011**

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement"), dated as of June 17, 2011, between ROBERT L. JOHNS, AS TRUSTEE OF EACH OF THE BANKRUPTCY ESTATES OF AUGUSTA APARTMENTS, LLC, a West Virginia limited liability company, and MCCOY 6, LLC, West Virginia limited liability company (collectively, "Seller"), and WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY, A STATE INSTITUTION OF HIGHER EDUCATION ("Purchaser").

### WITNESSETH:

WHEREAS, on February 19, 2010, Augusta Apartments, LLC ("Augusta") filed a petition under Chapter 11 of the Bankruptcy Code (Case No. 10-BK-00303) (the "Augusta Bankruptcy Case") in the United States Bankruptcy Court for the Northern District of West Virginia (the "Bankruptcy Court"), and on July 21, 2010, Seller was appointed as the Trustee of the bankruptcy estate of Augusta (hereinafter, the "Augusta Estate"); and

WHEREAS, on February 19, 2009, McCoy 6, LLC ("McCoy 6") filed a petition under Chapter 11 of the Bankruptcy Code (Case No. 09-BK-00304) (the "McCoy 6 Bankruptcy Case"; the Augusta Bankruptcy Case and the McCoy 6 Bankruptcy Case are hereinafter collectively referred to as the "Bankruptcy Cases") in the Bankruptcy Court, and on July 21, 2010, Seller was appointed as the Trustee of the Bankruptcy Estate of McCoy 6 (hereinafter, the "McCoy 6 Estate"; the Augusta Estate and the McCoy 6 Estate are hereinafter collectively referred to as the "Estates"); and

WHEREAS, the Augusta Estate owns certain parcels of land located in the City of Morgantown, West Virginia, improved with a multi-story apartment complex known as "The Augusta on the Square" and those other parcels, lots, buildings, houses and structures, which are

subject to the liens of PNC Bank, successor in interest to National City Bank (the “PNC Liens”), each of which is more particularly described on Schedule 1.1(a) attached hereto; and

WHEREAS, the Augusta Estate leases portions of such real property for residential purposes (all of such leases together with the rents arising therefrom and all operations related thereto being hereinafter collectively referred to as the “Rental Business”); and

WHEREAS, the McCoy 6 Estate owns certain slivers of land located in the City of Morgantown relating to and necessary for the operation of The Augusta on the Square, each of which slivers are more particularly described on Schedule 1.1(b) attached hereto; and

WHEREAS, Purchaser wishes to acquire from Seller, and Seller wishes to sell to Purchaser, all of said real estate and all improvements thereon, together with all such other assets, property and rights of the Augusta Estate and the McCoy 6 Estate, as hereinafter more particularly described, including, but not limited to, all of the personal property located on the real estate, and rights relating to and used in connection with the Rental Business, upon the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants, agreements, representations and warranties herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I

### SALE OF ASSETS

1.1 Assets to be Transferred. Subject to the terms and conditions set forth in this Agreement, at the Closing (as defined in Section 4.1), Seller agrees to sell, convey, transfer, assign and deliver to Purchaser, by apt and proper special warranty deeds, bills of sale, assignments and other instruments of conveyance and transfer satisfactory to Purchaser and its

counsel, and Purchaser agrees to purchase from Seller, the following described assets, properties and rights (collectively the “Assets”):

(a) all of the Augusta Estate’s right, title and interest in and to those certain parcels or tracts of land, easements, rights of way and other interests and rights set forth and described on Schedule 1.1(a) attached hereto, together with all buildings, houses, structures, parking facilities and lots, and any other improvements located thereon or attached thereto which are subject to the PNC Liens (collectively, the “Augusta Real Property”);

(b) All of the McCoy 6 Estate’s right, title and interest in and to those certain parcels or tracts of land, easements, rights of way and other interests and rights set forth and described on Schedule 1.1(b) attached hereto, together with all structures, parking facilities and lots, and any other improvements located thereon or attached thereto (collectively, the “McCoy 6 Property”; the McCoy 6 Property and the Augusta Real Property are hereinafter collectively referred to as the “Real Property”).

(c) all of the Augusta Estate’s right, title and interest in and to all furniture, furnishings, machinery, chattels, tools, equipment, parts, supplies, signs, cabinets, air conditioning and heating systems, lighting fixtures, floor, wall and counter fixtures, and all other fixtures of every other kind and nature, hardware, spare and replacement parts, computers, office equipment, and all other tangible personal property relating to or used in connection with the Rental Business located on the Real Property, including, without limitation, all of the items of personal property set forth and described on Schedule 1.1(c) attached hereto (collectively, the “Tangible Personal Property”);

(d) all of the Augusta Estate's right, title and interest in and to all residential leases and other rental contracts to which Seller is a party relating to the Real Property (collectively, the "Leases"), from and after the date of Closing, including, without limitation, those leases and contracts set forth on the list described in Section 5.3 hereof;

(e) all of the Augusta Estate's right, title and interest in and to all permits, licenses, certificates, orders and other governmental authorizations, to the extent such permits, licenses, certificates, orders and authorizations are transferable, relating to and necessary in connection with the operation of the Assets and the Rental Business, including, without limitation, those permits, licenses, certificates, orders and authorizations set forth and described on Schedule 1.1(e) attached hereto;

(f) all of the Augusta Estate's right, title and interest in and to all performance or other bonds, and cash and cash equivalents in connection with any permits, licenses or other governmental authorizations held by Seller with respect to the Assets;

(g) all of Estates' right, title and interest in and to all plans and specifications and architectural and engineering drawings, site plans, operating manuals, maintenance manuals and records, environmental studies and reports, and the right to obtain copies at Purchaser's expense of books and records, maps, surveys, ledgers, rental rolls and occupancy records, and all other files, correspondence records of every kind relating to the Rental Business and the Assets (provided, however, the Seller shall convey to Purchaser at Closing all original Leases and deeds) (collectively, the "Books");

and Records”), and to all trade secrets, trade names, service names, service marks, logos, goodwill, and computer software relating to the Assets; and

(h) all of the Augusta Estate’s right, title and interest in and to all security deposits relating to the ownership or use of the Assets.

1.2 Excluded Assets. The parties hereto agree that the Assets purchased hereunder shall exclude (a) Seller’s cash other than the cash contemplated in Sections 1.1(f) and 1.1(h); (b) all accounts receivable for periods prior to Closing; (c) any and all of Seller’s right, title and interest in and to any maintenance, service, supply, equipment rental and other contracts (other than the Leases); and (d) any claims or rights of Seller arising under the Federal Bankruptcy Code.

1.3 Title to Assets.

(a) Seller hereby agrees that it shall convey, transfer and assign the Real Property to Purchaser at Closing by apt and proper special warranty deed in fee simple, with good and marketable title such as will be insurable by a reputable title insurance company at its regular rates, free and clear of all liens, security interests, easements, claims, encumbrances and other restrictions (including, but not limited to, those liens, security interests, easements, claims, encumbrances and other restrictions listed as item numbers 2 through 33 and 38 on Schedule 5.3 attached hereto), except: (i) the lien for real estate property taxes for the year 2011; and (ii) such easements, restrictions and other exceptions to title as shall be reasonably acceptable to Purchaser. The above-described title, subject to the qualifications hereinabove provided, is hereinafter referred to as “Good and Marketable Title to Real Property.”

(b) Seller further agrees to convey, transfer and assign to Purchaser at Closing all of the Assets other than the Real Property (all of such other Assets being herein collectively called the "Personal Property") by apt and proper bills of sale, assignments (including acceptances and acknowledgments thereof), endorsements and other instruments of conveyance and transfer, in form and substance acceptable to Purchaser and its counsel, as shall be necessary to transfer and convey good and marketable title to all such Personal Property, free and clear of all liens, security interests, claims, encumbrances and other restrictions, including, without limitation, any claims for personal property tax assessed or due for the year 2010, excepting, however, personal property taxes for the year 2011, which shall be prorated as provided in Section 3.4 below. The above-described title to such Personal Property is hereinafter referred to as "Good Title to Personal Property."

## ARTICLE II

### RETAINED AND ASSUMED LIABILITIES

2.1 Liabilities and Obligations Retained by Seller. Except as expressly set forth in Section 2.2 hereof, Seller shall be fully responsible for the payment of all debts and shall retain full responsibility for the payment, discharge and satisfaction of all causes of actions, suits, demands, claims, debts, obligations and other liabilities created, arising out of or relating to the Assets or the operation of Seller's or either of the Estates' businesses on or prior to the Closing Date (as defined in Section 4.1 hereof), whether now known or unknown, fixed, contingent or otherwise, including, without limitation:

(a) all real and personal property taxes on any of the Assets for time periods on or prior to the Closing Date;

(b) all obligations and liabilities to the extent attributable to defaults, conditions, events, actions or omissions or accidents, claims, injuries, deaths or other damages occurring on or prior to the Closing Date;

(c) all claims of any creditors of Seller or of the Estates; and

(d) all obligations and liabilities to any employees, former employees, agents or consultants of Seller, including, without limitation, any and all severance, vacation, pension, health, maternity leave, holiday plan or policy, sick leave plan or policy, employee stock purchase or stock option plan, profit sharing plan, bonus plan, disability or group insurance plan, deferred compensation, medical, life, dental and workers' compensation obligations and liabilities, and any other employee benefit or related obligations.

2.2 Liabilities and Obligations Assumed by Purchaser.

At Closing, Purchaser shall assume all obligations and liabilities arising out of or relating to the Assets after the Closing Date, but only to the extent such obligations and liabilities have not otherwise been expressly retained by Seller pursuant to Section 2.1 above.

**ARTICLE III**

**CONSIDERATION FOR ASSETS; RELATED MATTERS**

3.1 Consideration for Assets. As total consideration for the Assets, Purchaser shall pay Seller the sum of Eleven Million Dollars (\$11,000,000), which consideration (the "Purchase Price") shall be paid to Seller at Closing in cash by means of wire transfer of immediately available funds into one or more bank accounts as specified by Seller.

3.2 Earnest Money Deposit. Immediately upon execution of this Agreement, Purchaser shall deliver to Seller, in his capacity as Trustee for Augusta, the sum of \$550,000 (the "Earnest Money Deposit") in cash by wire transfer as an earnest money deposit. The Earnest

Money Deposit shall be held in escrow by Seller, in his capacity as Trustee for Augusta, and applied at Closing to the Purchase Price. If this Agreement is terminated by both parties pursuant to Section 4.2(i), or if this Agreement is terminated by Purchaser under Sections 4.2(ii), 4.2(iii) or 4.2(iv), Seller shall refund the Earnest Money Deposit to Purchaser as soon as possible and in no event more than two days after the date of such termination.

3.3 Taxes; Expenses. At Closing, Seller shall pay all excise and transfer taxes, if any, required to be paid in connection with the sale and transfer of the real estate to be transferred hereunder, and Purchaser shall be responsible solely for payment of recording costs.

3.4 Prorations. The parties agree that all rents collected from the tenants as of the Closing under the Leases and all charges for utilities (including, without limitation, electricity, water, sanitation, fire service fees, and garbage disposal) and like services furnished to Seller in connection with the operation of the Assets, shall be prorated at the Closing on the basis of the number of days of the relevant time period which have elapsed prior to the Closing Date, and that Seller shall be responsible for paying that portion of such obligations and expenses from the Purchase Price on the date of the Closing, and shall be entitled to receive that portion of the rents, attributable to the period prior to the Closing Date, and Purchaser shall be responsible for that portion of such obligations and expenses, and shall be entitled to receive that portion of the rents, attributable to the period after the Closing Date. The parties further agree that all 2010 real and personal property taxes and Seller's prorated portion of other fees and charges will be paid at Closing, that Seller's prorated portion of 2011 real and personal property taxes shall be placed into escrow with Seller at Closing, and that Purchaser shall pay all other such fees and charges as and when they become due and payable.

3.5 Calculation of Prorations; Adjustments, Escrow. In the event final figures have not been reached on any of the adjustments and prorations provided for hereinabove by the Closing Date, the parties shall close using estimated amounts for each such item, subject to readjustment when such final amounts have been determined. The parties agree that they shall determine the amounts of all such prorations and adjustments required hereunder on or before the Closing Date, if possible, or within 60 days thereafter. If the amount owed to Purchaser as a result of the final determination of all such adjustments is greater than the estimated amount used at Closing, Seller shall pay Purchaser the difference in cash within two business days of such determination. The parties' obligations under this Section 3.5 shall survive the Closing Date.

3.6 Tenant Receivables. Rents due from tenants under the Leases (collectively, "Tenant Receivables") and not collected by Seller as of Closing shall not be prorated between Seller and Purchaser at Closing, but shall be apportioned on the basis of the period for which the same is payable and if, as and when collected, as follows:

(a) Tenant Receivables and other income received from the tenants under the Leases after Closing shall be applied in the following order of priority: (1) first to delinquent Tenant Receivables which were due and payable as of Closing but not collected by Seller as of Closing, which amount shall be delivered to Seller; (2) second, to payment of the current Tenant Receivables then due for the month in which the Closing Date occurs, which amount shall be apportioned between Purchaser and Seller as of the Closing Date as set forth in Section 3.4 hereof (with Seller's portion thereof to be delivered to Seller); (3) third, to Tenant Receivables first coming due after Closing but applicable to the period of time before Closing (collectively, "Unbilled Tenant Receivables"), which amount shall be delivered to

Seller; and (4) thereafter, to payment of Tenant Receivables first coming due after Closing and applicable to the period of time after Closing, which amount shall be retained by Purchaser. Any sums received by Purchaser to which Seller is entitled shall be held in trust for Seller on account of such past due rents payable to Seller, and Purchaser shall remit to Seller any such sums received by Purchaser to which Seller is entitled within ten (10) business days after receipt thereof less reasonable, actual costs and expenses of collection, including reasonable attorneys' fees, court costs and disbursements, if any. Seller expressly agrees that if Seller receives any amounts after the Closing Date which are attributable, in whole or in part, to any period after the Closing Date, Seller shall remit to Purchaser that portion of the monies so received by Seller to which Purchaser is entitled within ten (10) business days after receipt thereof. With respect to Unbilled Tenant Receivables, Purchaser covenants and agrees to bill the same when billable. The provisions of this Section 3.6 shall survive the Closing.

(b) At the Closing, Seller shall deliver to Purchaser a certificate setting forth (i) a complete and accurate list of the outstanding balance of each security deposit held by Seller with respect to the Leases; (ii) the name and address (including apartment number) of the tenant providing such deposit; (iii) the amount (if any) previously deducted by Seller or the Estate from each tenant's security deposit to reimburse it for costs incurred in connection with each Lease; (iv) in reasonable detail the nature and amount of each cost incurred; and (v) the date of termination of each Lease.

3.7 Elevator Repair. Seller agrees that it shall repair to Purchaser's satisfaction prior to Closing all damages to Elevator No. 1 in Building 51, as more particularly

described in Schedule 5.7 hereto, and complete such other work as shall be necessary for such elevator to become operational and available for use.

3.8 2006 Agreement to Grant Option. Seller hereby acknowledges and confirms that it is required to grant an option to the City of Morgantown to purchase an easement (the "City Road Option") as contemplated by Article III, Section 8 of that certain Agreement (the "2006 Agreement") dated as of November 8, 2006 by and among the City of Morgantown, the Morgantown Building Commission, Augusta, McCoy 6 and First United Bank & Trust, which option will apply to that certain real property designated Parcel A, shown on the survey captioned Plat 6 and attached hereto as Schedule 3.8 (such property being referred to herein as the "Option Property").

#### ARTICLE IV

##### **CLOSING; TERMINATION OF AGREEMENT**

4.1 Time and Place. The consummation of the transactions contemplated herein (the "Closing") shall take place at the offices of Jackson Kelly PLLC, 150 Clay Street, Morgantown, West Virginia, at a time and date within 60 days after the entry of the Bankruptcy Court Order approving the sale of the Assets as contemplated hereby, or at such other time and place as the parties may mutually agree upon, at which time (the "Closing Date") and place the following transactions shall occur:

(a) Purchaser shall pay to Seller the Purchase Price as contemplated by Article III hereof, less transfer taxes, if any, and adjusted for the applicable prorations set forth in Section 3.4 hereof;

(b) Seller shall deliver to Purchaser (in form and substance satisfactory to Purchaser and its counsel) one or more special warranty deeds, bills of sale, assignments (including acceptances and acknowledgments thereof), endorsements,

titles, and such other instruments of conveyance as may be reasonably requested by Purchaser to transfer and convey the Assets to Purchaser and to otherwise effect the consummation of the transactions contemplated by this Agreement and which are normal and customary in transactions of like kind;

(c) Seller shall deliver to the title insurance company designated by Purchaser affidavits, dated as of the Closing Date, in the form then required by such title insurance company to insure title at its regular rates in accordance with its title commitments;

(d) Seller shall deliver to Purchaser the Books and Records, including without limitation, the original copies of the Leases;

(e) All tenant security deposits collected and not applied by Seller (and interest thereon if required by law or contract), together with all utility and similar deposits, shall be transferred or credited to Purchaser at Closing. As of the Closing, Purchaser shall assume Seller's obligations related to tenant's security deposits, but only to the extent they are credited or transferred to Purchaser; and

(f) Seller shall deliver to Purchaser or transfer into Purchaser's name, or cause to be delivered to Purchaser or transferred into Purchaser's name, all bonds, cash or cash equivalents in connection with any permits, licenses or other governmental authorizations held by Seller with respect to the Assets, and shall take all other actions requested by Purchaser to deliver to Purchaser physical possession of all Assets.

4.2 Termination of Agreement. Anything herein to the contrary notwithstanding, this Agreement may be terminated immediately and the transactions herein contemplated may be abandoned at any time:

- (i) by mutual consent of Seller and Purchaser; or
- (ii) by Purchaser if Seller shall default in the performance of any part of this Agreement, or if any of the conditions set forth in Article VIII has not been satisfied prior to the Closing Date; or
- (iii) by Purchaser if the Bankruptcy Court enters an order approving the sale of any of the Assets to a party other than Purchaser; or
- (iv) by Purchaser or Seller if the Bankruptcy Court has not entered a Bankruptcy Court Order approving the sale of the Assets to Purchaser contemplated hereby on or by August 10, 2011, and no agreement has otherwise been reached by the parties to extend the date for the Closing.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

**NOTE: SELLER IS A CHAPTER 11 BANKRUPTCY TRUSTEE WHO WAS APPOINTED TO OPERATE THE AUGUSTA APARTMENTS ON JULY 21, 2010, AS TRUSTEE. SELLER HAS SUPERVISED EMPLOYEES AND MANAGED THE OPERATIONS OF AUGUSTA, BUT HAS NOT BEEN AT THE AUGUSTA APARTMENTS ON A DAY-TO-DAY BASIS. AS A RECENTLY APPOINTED TRUSTEE, SELLER HAS NO KNOWLEDGE OF THE CONSTRUCTION OF THE AUGUSTA APARTMENTS, THE DETAILS OF THE STRUCTURAL CONDITION OF THE FACILITY, OR THE MECHANICAL INTEGRITY OF THE FACILITY OR ITS**

COMPONENTS OR SYSTEMS. SELLER HAS PROVIDED PURCHASER WITH STRUCTURAL DRAWINGS OF THE BUILDINGS COMPRISING THE AUGUSTA APARTMENTS AND HAS GIVEN PURCHASER THE OPPORTUNITY TO INSPECT THE STRUCTURAL COMPONENTS AND RELATED COMPONENTS AND SYSTEMS THEREOF, AND PURCHASER HAS CONDUCTED INSPECTIONS OF THE AUGUSTA APARTMENTS TO ITS SATISFACTION PRIOR TO THE EXECUTION OF THIS AGREEMENT.

Based on the above statement, Seller hereby represents and warrants to Purchaser as follows:

5.1 Organization and Qualification. Each of Augusta and McCoy 6 is a limited liability company duly organized, validly existing and in good standing under the laws of the State of West Virginia and has the requisite limited liability company power to own its property and to carry on its business as it is now being conducted, and Robert L. Johns has been duly appointed as trustee of each of the bankruptcy estates of Augusta and McCoy 6, respectively, in the Bankruptcy Cases.

5.2 Seller's Authority Relative to this Agreement. Seller has full power and authority to enter into, deliver and perform this Agreement and to consummate the transactions contemplated hereby. On or before the Closing Date, the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will have been duly authorized by all necessary legal proceedings on the part of Seller, including proceedings before the Bankruptcy Court involving the Bankruptcy Cases, and no other corporate or legal proceedings are necessary to authorize this Agreement and the transactions contemplated hereby or to consummate the transactions contemplated hereby. This Agreement

has been duly executed and delivered by Seller and constitutes a valid and binding obligation of Seller, enforceable in accordance with its terms, subject to approval by the Bankruptcy Court.

5.3 Title to Real Property; Leases. Except as set forth on Schedule 5.3 attached hereto, Seller has Good and Marketable Title to Real Property. Seller has no knowledge concerning any contemplated or proposed public use, taking or purchase by condemnation of, or any exercise of the power of eminent domain with respect to, any part or all of the Real Property. Other than the Real Property, neither the Estates nor Seller owns, leases or otherwise has an interest in any real property used in or otherwise necessary to operate the Rental Business, other than surface parking rights at Grand Central Business Center property and a parking lease from Purchaser. Seller has provided to Purchaser a complete and accurate list of (i) all of the Leases; (ii) the amount of rent due and payable under each Lease; and (iii) the amount of rent, if any, past due under each Lease. Except as disclosed to the Purchaser, to the best of Seller's knowledge, no default exists under any of the Leases.

5.4 Compliance with Law. To Seller's actual knowledge, except as set forth on Schedule 5.4 attached hereto, neither Seller, Augusta, McCoy 6 nor either of the Estates has received any written orders, notices of investigation, assessments or any other notices from any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, that Seller, Augusta, McCoy 6, the Estates or the Assets, or any part thereof, is in violation of any law, regulation, rule, order, decree or judgment applicable to Seller, Augusta, McCoy 6, the Estates or any of the Assets. To the Seller's actual knowledge, each of Augusta, McCoy 6 and the Estates is in compliance in all material respects with all applicable laws, regulations, rules, orders, judgments and decrees of any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, having

jurisdiction over Augusta, McCoy 6, the Estates or any of the Assets, and Augusta holds all permits, licenses, certificates, orders and other governmental authorizations (hereinafter collectively referred to as the “Permits and Licenses”) necessary for the use and operation of the Assets as residential and commercial rental property and for the temporary occupation of the Real Property.

5.5 Environmental. To the Seller’s actual knowledge, no hazardous materials have been used, discharged or stored on or about the Real Property, and no such hazardous materials are now or will be at Closing located on or below the surface of the Real Property. As used herein, “hazardous materials” shall mean asbestos, oil as defined in the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, and any “hazardous substance”, “hazardous materials” or “hazardous wastes” as defined or used in the Federal Water Pollution Prevention and Control Act, supra, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 18015101-5128, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-7000, and in the regulations adopted and publications promulgated pursuant thereto, or in any other federal, state or local environmental law, ordinance, rule or regulation.

5.6 Title to Personal Property. Based on the operation of Section 363 of the Bankruptcy Code, Seller will convey good and marketable title to the Personal Property, free and clear of all liens, security interests, claims, encumbrances and restrictions of every kind or nature, excepting, however, personal property taxes for the year 2011.

5.7 Condition of Assets. To the actual knowledge of Seller, except for the surface drainage issues and needed elevator repairs (which repairs will be completed by Seller by

Closing) described on Schedule 5.7 attached hereto, there are no existing structural defects in any of the buildings and other improvements located on the Real Property, and all plumbing, heating, ventilating and air conditioning equipment, electrical wiring and fixtures, elevators, roof, fire suppression systems, emergency power assistance, any gas distribution systems and the water and sewer system presently on or in the Real Property and all facilities and equipment relating thereto are in good working order and condition.

5.8 Legal Proceedings, etc. Except as set forth on Schedule 5.8 attached hereto, there is no legal, administrative, arbitration or other proceeding or known governmental investigation pending, or to the best of Seller's knowledge, threatened, against or affecting Seller, the Estates, Augusta or McCoy 6 which, either alone or in the aggregate, is reasonably likely to have an adverse effect on any of the Assets, or on any action taken or to be taken by Seller under this Agreement.

5.9 Conflicting Instruments. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not, with or without the giving of notice, or the passage of time, (a) conflict with or result in the breach of any provision of the articles of organization or operating agreement of Augusta or McCoy 6, or (b) conflict with, violate, constitute a default under or result in the breach of any law, order, rule, regulation, writ, injunction or decree of any government, governmental instrumentality, agency or body, arbitration tribunal or court, domestic or foreign, having jurisdiction over Seller, the Estates or any of the Assets.

5.10 Consents and Approvals Authorities and Other Persons. Except for approval by the Bankruptcy Court and as set forth on Schedule 5.10 attached hereto, no characteristic of Seller, Augusta, McCoy 6 or the Estates or of the nature of their business or

operations requires any consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority or any other person in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

5.11 Intangible Property. Except as set forth in Schedule 5.11 attached hereto, (a) Seller has no registered patents, trademarks, service marks or trade names and no franchises; (b) no applications for any of the foregoing are pending; and (c) there are no permits, grants, licenses or other rights running to or from Seller relating to any of the foregoing which are material to the business of Seller. Seller has not infringed any adversely held patent, invention, trademark, service mark, trade name or brand name of any other person or received notice of any claim of any such infringement and Seller does not know of any basis for any such charge or claim.

5.12 Brokers. No broker or finder has acted directly or indirectly for Seller in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements or understandings made by or on behalf of Seller.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

6.1 Corporate Organization and Authority. Purchaser is a public agency duly organized and validly existing under the laws of the State of West Virginia, authorized to determine, control, supervise and manage the financial, business and education policies and affairs of West Virginia University, and has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

6.2 No Default or Breach of Obligations. Neither the execution or delivery by Purchaser of this Agreement and the documents to be executed and delivered by it pursuant hereto, nor the consummation of the transactions contemplated herein or therein, will conflict with, violate or result in the breach of or constitute a default under any law, regulation, order, writ, injunction, decree, determination or award of any court, governmental department, board, agency or instrumentality, domestic or foreign, having jurisdiction over Purchaser, or any arbitrator, applicable to Purchaser.

6.3 Execution and Delivery. The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated have been duly authorized by Purchaser's governing board, and no other corporate proceedings on the part of Purchaser are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Purchaser and constitutes a valid and binding obligation of Purchaser, enforceable in accordance with its terms.

6.4 Brokers. No broker or finder has acted directly or indirectly for Purchaser in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on agreements, arrangements or understandings made on behalf of Purchaser.

## ARTICLE VII

### OBLIGATIONS PRIOR TO CLOSING

7.1 Conduct of Business. Seller covenants and agrees that, except as otherwise consented to by Purchaser prior to the Closing:

- (a) Seller's and the Estates' businesses shall be conducted only in, and Seller and the Estates shall not take any action except in, the ordinary course of business and consistent with past practice.

(b) Neither Seller nor either of the Estates will engage in any one or more of the following activities:

(i) issue, sell, pledge, or dispose of, or agree to issue, sell, pledge or dispose of, any of its membership interests, or grant or issue, or agree to grant or issue, any options, warrants or other rights calling for the issue thereof;

(ii) sell, pledge, dispose of or encumber any of the Assets;

(iii) make or permit to be made any amendment or termination of any material contract or agreement to which it is a party or surrender or forfeit any permit or license or other material governmental authorization necessary to own or operate any of the Assets;

(iv) make any material investment of a capital nature;

(v) incur any indebtedness or borrow money, make any loans or advances to any individual, firm or corporation, or assume, guarantee, endorse or otherwise become responsible for the obligation of any other individual, firm or corporation;

(vi) enter into any long-term contracts or commitments; or

(vii) use any of the Assets except for proper corporate purposes and in accordance with all applicable federal, state and local laws and regulations.

7.2 Access to Information. Seller shall afford the officers, employees and agents of Purchaser complete access at all reasonable times, from the date hereof to the Closing, to its officers, employees, agents, properties, operating manuals, books and records, and shall furnish Purchaser all financial information, operating manuals and other data and information relating to the Real Property and other Assets as Purchaser, through its officers, employees or agents, may reasonably request, including, but not limited to, any and all building and engineering plans and records, environmental studies, appraisals, lists of claimants against the

Estates with current amounts claimed, insurance policies, title opinions, surveys, maps, leases, and the Permits and Licenses.

7.3 Consents; Additional Agreements. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, including (i) using reasonable efforts to remove any legal impediment to the consummation or effectiveness of such transactions, and (ii) using reasonable efforts to obtain all necessary waivers, consents and approvals of all third parties and governmental bodies, and to effect all necessary filings with all applicable state and federal governmental agencies or authorities.

7.4 Insurance. Until the Closing Date, Seller will maintain in full force and effect all of its presently existing insurance coverage, or insurance comparable to such existing coverage.

## ARTICLE VIII

### CONDITIONS TO OBLIGATIONS OF PURCHASER

Each and every obligation of Purchaser under this Agreement to be performed on or before the Closing shall be subject, unless waived by Purchaser, to the satisfaction on or before the Closing Date of each of the following conditions:

8.1 Bankruptcy Court Approval. The entry of a final order of the Bankruptcy Court approving all of the transactions contemplated herein (which shall be substantially in the form attached hereto as Exhibit A) on or by August 1, 2011, including, without limitation, an order pursuant to 11 U.S.C. §§ 363 and 365 (i) approving the sale of the Assets and the assignment of any leases, free and clear of any and all liens, security interests, claims, options

(other than the City Road Option as contemplated by the 2006 Agreement), easements, encumbrances and other restrictions (including, without limitation, any claims, whether contingent or otherwise, for real or personal property taxes for the year 2010 or any prior year), except for the liens for all real estate and personal property taxes for the year 2011; (ii) providing that Purchaser shall not be deemed or otherwise considered a successor in interest to any liabilities or obligations of Seller pertaining to the Assets, including but not limited to, any and all obligations, liabilities, conditions, covenants, requirements or responsibilities under (1) any agreement, indenture or other contract with the City of Morgantown, The Morgantown Building Commission, the West Virginia Economic Development Authority or any other governmental agency or authority, or with any lender, creditor or any other entity or individual, (2) The Square At Falling Run Planned Unit Development and/or the Outline Plan for The Square At Falling Run Planned Unit Development, or (3) any other agreement, indenture or similar contract pertaining to The Augusta on the Square, The Augusta and/or The Square at Falling Run; and (iii) which shall be in all respects in compliance with applicable bankruptcy laws and rules and shall otherwise be in form and content satisfactory to Purchaser and its counsel.

Additionally, at least five (5) business days prior to the hearing on approval of the transactions described herein, the Bankruptcy Court shall have approved a break-up fee payable to Purchaser of the lesser of \$220,000 or Purchaser's out-of-pocket expenses relating to the transactions described herein, including, without limitation, attorneys' fees and expenses, as such break-up fee is more particularly described in Trustee's motion for approval of the transactions described herein.

8.2 Title to Assets. In the opinion of counsel for Purchaser, at the Closing Purchaser will be acquiring Good and Marketable Title to Real Property, and Good Title to Personal Property.

8.3 Title Insurance and Survey. Purchaser shall have received an Owner's Title Insurance Policy insuring title to the Real Property in the sum of not less than \$11,000,000, dated or updated to the Closing Date, issued by a reputable title insurance company at regular rates, satisfactory to Purchaser in form and substance, containing no exceptions for matters of survey, mechanics liens, parties in possession (other than the tenants under the Leases) or for any other matter which Purchaser reasonably determines to be unacceptable, and Purchaser shall have also received an "as-built" survey satisfactory to it and to such title insurance company for the removal of the exception for matters of survey. Seller agrees that Purchaser may, in its sole discretion, elect to use the description of the Real Property set forth in such survey in the deed or deeds to be executed and delivered at the Closing, in lieu of the description of the Real Property attached hereto as Schedules 1.1(a) and 1.1(b). All premiums for such title insurance shall be borne by Purchaser, and all attorney fees and similar costs for an examination and report to such insurance company shall be borne by Purchaser.

8.4 Condition and Sufficiency of Assets. Since the execution of this Agreement, the Assets shall not have been adversely affected in any material way as the result of any act of God, fire, flood, war, labor disturbance or similar calamity, or by the actions of any lessee thereof or any other persons, and there shall not otherwise have been any material adverse change in the condition of the Assets since the date hereof.

8.5 Permits and Licenses. Purchaser shall have received all Permits and Licenses as Purchaser and its counsel shall deem necessary in order to purchase and operate the

Assets and to otherwise occupy the Real Property, provided that the failure to have received a permanent occupancy permit due to inadequate parking facilities shall not relieve Purchaser of its obligation to close the transactions contemplated herein.

8.6 Adoption and Recordation of 2006 Ordinance and 2011 Ordinance; City Road Option. Purchaser shall have received evidence of (a) the recordation in the real estate records in the office of the Clerk of the County Commission of Monongalia County of City of Morgantown Ordinance numbers 06-50 and 06-51, each adopted and passed on December 5, 2006 by the Common Council of The City of Morgantown, West Virginia, and (b) the adoption and passage of an ordinance (herein, the "2011 Ordinance") by said Common Council vacating, abandoning and annulling that certain portion of Falling Run Road more particularly described on Schedule 8.6 attached hereto, and of the recordation of the 2011 Ordinance in the aforesaid Clerk's office. In addition, Purchaser shall have received an executed copy of the City Road Option, which Option (1) shall not prohibit or restrict Purchaser's use of the Option Property prior to the exercise of such Option; (2) shall not contain provisions which, upon the exercise of the Option, allow the City of Morgantown to eliminate Purchaser's or its tenants' access to The Augusta on the Square, including vehicular ingress and egress to any parking facilities located within The Augusta on the Square; and (3) shall provide that the exercise price shall be an amount equal to the fair market value of the Option Property at the time of the exercise thereof, excluding the value of any improvements made to the Option Property after the Closing Date.

8.7 Maintenance Easement. The City of Morgantown Building Commission shall have granted to Augusta and its successors and assigns an easement to enter upon, over, under and across that certain property shown and more particularly described on Schedule 8.7 attached hereto for purposes of operating, repairing and maintaining the improvements placed

thereon by Augusta, and which easement shall otherwise be in form and substance satisfactory to Purchaser, and Seller shall have conveyed such easement to Purchaser.

8.8 Representations and Warranties True. The representations and warranties contained in Article V hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

8.9 Performance of Covenants. Seller shall have performed and complied in all material respects with each and every covenant, agreement and condition required to be performed or complied with by it prior to or on the Closing Date.

8.10 No Governmental or Other Proceeding or Litigation. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated hereby, and no suit, action, investigation, inquiry or proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby or seeks to impose any liability on Purchaser as a result of the transactions contemplated hereby.

8.11 Approvals and Consents. All consents and approvals of any private person, and all consents and approvals or the absence of disapprovals within applicable time periods, from public authorities, Federal, state, foreign or local (or exemptions from the requirements therefor), the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement, shall have been obtained, including, without limitation, any required approval by public entities or public bodies, and the governing boards thereof, in connection with a sale to a public entity or public body.

8.12 No Injunctions. On the Closing Date, there shall be no effective injunction, writ or temporary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing the transactions provided for herein not be consummated as herein provided.

8.13 Certificates. Seller shall have furnished Purchaser with such certificates of appropriate parties to evidence compliance with the conditions set forth in this Article VIII as may be reasonably requested by Purchaser.

## ARTICLE IX

### CONDITIONS TO SELLER'S OBLIGATIONS

Each and every obligation of Seller under this Agreement to be performed on or before the Closing shall be subject, unless waived by Seller, to the satisfaction on or before the Closing Date of the following conditions:

9.1 Bankruptcy Court Approval. The entry of a final order of the Bankruptcy Court approving all of the transactions contemplated herein (which shall be substantially in the form attached hereto as Exhibit A), including, without limitation, an order pursuant to 11 U.S.C. §§ 363 and 365 (i) approving the sale of the Assets and the assignment of any leases, free and clear of any and all liens, security interests, claims, easements, encumbrances and other restrictions (including, without limitation, any claims, options, whether contingent or otherwise, for real or personal property taxes for the year 2010 or any prior year), except for the liens for all real estate and personal property taxes for the year 2011; (ii) providing that Purchaser shall not be deemed or otherwise considered a successor in interest to any liabilities or obligations of Seller pertaining to the Assets, including but not limited to, any and all obligations, liabilities, conditions, covenants, requirements or responsibilities under (1) any agreement, indenture or other contract with the City of Morgantown, The Morgantown Building Commission, the West

Virginia Economic Development Authority or any other governmental agency or authority, or with any lender, creditor or any other entity or individual, (2) The Square At Falling Run Planned Unit Development and/or the Outline Plan for The Square At Falling Run Planned Unit Development, or (3) any other agreement, indenture or similar contract pertaining to The Augusta on the Square, the Augusta and/or The Square at Falling Run; and (iii) which shall be in all respects in compliance with applicable bankruptcy laws and rules and shall otherwise be in form and content satisfactory to Seller and its counsel.

9.2 Representations and Warranties True. The representations and warranties contained in Article VI hereof shall be in all material respects true and accurate as of the date when made and at and as of the Closing Date.

9.3 Performance of Covenants. Purchaser shall have performed and complied in all material respects with each and every covenant, agreement and condition required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

9.4 No Governmental or Other Proceeding or Litigation. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated hereby, and no suit, action, investigation, inquiry or other proceeding by any governmental body or other person or legal or administrative proceeding shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereby or seeks to impose any liability on Seller as a result of the transactions contemplated hereby.

9.5 Approvals and Consents. All consents and approvals of any private person, and all consents and approvals or the absence of disapprovals within applicable time periods, from public authorities, Federal, state, foreign or local (or exemptions from the

requirements therefor), the granting or absence of which is necessary for the consummation of the transactions contemplated by this Agreement, shall have been obtained.

9.6 No Injunctions. On the Closing Date, there shall be no effective injunction, writ or temporary restraining order or any order of any nature issued by a court or governmental agency of competent jurisdiction directing the transactions provided for herein not be consummated as herein provided.

9.7 Certificates. Purchaser shall have furnished Seller with such certificates of its officers to evidence compliance with the conditions set forth in this Article IX as may be reasonably requested by Seller.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

10.1 Risk of Loss. Risk of loss of, or damage or destruction to, any of the Assets to be transferred to Purchaser hereunder from fire or other casualty or cause, shall be borne by Seller at all times prior to the Closing Date.

10.2 Entire Agreement. This Agreement, including the Schedules which form a part hereof, contains the entire understanding of the parties hereto in respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

10.3 Survival of Representations and Warranties. All representations, warranties, agreements, covenants and obligations made or undertaken by Purchaser or Seller in this Agreement (including the Schedules attached hereto), or in any certificate, instrument or

document delivered by or on behalf of any of the parties pursuant to this Agreement, shall survive the Closing hereunder.

10.4 Amendment and Modification. This Agreement may be amended, modified and supplemented only by an instrument in writing signed by all of the parties hereto.

10.5 Assignment. This Agreement and all the provisions hereof shall be binding upon and inure to the benefits of the parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party.

10.6 Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by U.S. registered or certified mail, return receipt requested, postage prepaid:

If to Purchaser to:

Vice President for Administration and Finance  
West Virginia University  
P. O. Box 6205  
Morgantown, West Virginia 26506

With a copy to:

Vice President for Legal Affairs and General Counsel  
West Virginia University  
P. O. Box 6201  
Morgantown, West Virginia 26506

With a copy to:

William F. Dobbs, Jr.  
Jackson Kelly PLLC  
P. O. Box 553  
Charleston, West Virginia 25322

If to Seller:

Robert L. Johns, Trustee of the Bankruptcy  
Estate of Augusta Apartments, LLC and  
the Bankruptcy Estate of McCoy 6, LLC  
216 Brooks Street, Suite 200  
Charleston, West Virginia 25301

or to such other address as a party shall hereafter specify by notice in writing to the other.

10.7 Non-waiver. No waiver or omission by either party to require performance by the other party of any of the terms and conditions of this Agreement, and no forbearance or indulgence granted or shown by either party, shall be effective unless contained in a written instrument signed by the waiving party, nor shall it release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all provisions or obligations of this Agreement on the latter's part to be performed unless it is so stated in said writing.

10.8 Expenses. Regardless of whether the Closing occurs, each party shall bear its own expenses in connection with this Agreement and the transactions herein contemplated, except to the extent resulting from a misrepresentation by either party or the breach by either party in performing their respective obligations herein, and except as otherwise expressly provided herein.

10.9 No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person other than the undersigned parties any rights or remedies under or by reason of this Agreement.

10.10 Further Assurances. Seller hereby agrees, upon the request of Purchaser and without additional consideration, to take any and all steps reasonably necessary to place

Purchaser in possession and operating control of the Assets, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances or assurances as may be reasonably required in order fully to transfer, assign, convey, grant, assure and confirm to Purchaser all of the Assets, or to vest in Purchaser such title to the Assets, as provided herein.

10.11 Severability of Provisions. If any provision of this Agreement, or the application thereof, to any person or circumstance shall, to any extent, be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held to be invalid or enforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.

10.12 Headings. The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

10.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

10.14 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of West Virginia (without reference to any conflicts of laws principles thereof).

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**SELLER:**

**AUGUSTA APARTMENTS, LLC**

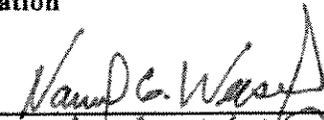
By:   
Robert L. Johns, Trustee of the  
Bankruptcy Estate of Augusta  
Apartments, LLC

**MCCOY 6, LLC**

By:   
Robert L. Johns, Trustee of the  
Bankruptcy Estate of McCoy 6, LLC

**PURCHASER:**

**WEST VIRGINIA UNIVERSITY BOARD OF  
GOVERNORS ON BEHALF OF WEST  
VIRGINIA UNIVERSITY, a State Institution of  
Higher Education**

By:   
Title: Vice President Administration - Finance

## SCHEDULE 1.1(a)

### **Description of Augusta Real Estate**

All those certain lots or parcels of real estate, together with the buildings and improvements thereon, situate in the Fourth Ward to the City of Morgantown and the Fifth Ward to the City of Morgantown, Monongalia County, West Virginia, more particularly bounded and described as follows, to-wit:

#### **THE AUGUSTA SITE, PARCELS 1, 2 AND 3:**

All of those certain lots or parcels of real estate, together with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the Fourth and Fifth Wards of the City of Morgantown, Monongalia County, West Virginia, more particularly bounded and described as follows, to-wit:

**PARCEL 1:** That certain parcel described in that certain Plat of Survey recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1331, at Page 226, more particularly bounded and described as follows: BEGINNING at the 5/8 inch iron rod, set this survey, at the intersection of the northern right-of-way line of Yoke Street (formerly a 16 foot alley) and the eastern right-of-way line of Mason Street (formerly a 16 foot alley); thence N. 47° 39' 32" E. 336 feet with said eastern right-of-way line to a 5/8 inch iron rod, found, at the southwest corner of lands of Stillman Investments, LLC; thence with Stillman for three lines, S. 42° 20' 18" E. 81.00 feet to a 5/8 inch iron rod, found; thence S. 47° 39' 42" W. 2.00 feet to a 5/8 inch iron rod, found; thence S. 42° 20' 18" E. 9.00 feet to a 5/8 inch iron rod; thence leaving Stillman S. 47° 39' 42" E. 279.08 feet to a 5/8 inch iron rod in the said northern right-of-way of Yoke Street; thence with said northern right-of-way line N. 73° 43' 58" W. 105.44 feet to the place of BEGINNING, containing 27,750 square feet (0.637 acres), more or less, as surveyed in October, 2006, by Alpha Associates, Incorporated, Morgantown, West Virginia

The parcel of land hereinabove described is a portion of that same real estate conveyed unto McCoy 6 Apartments Limited Liability Company by three deeds of record in the office of the Clerk of the County Commission of Monongalia County, West

Virginia, in Deed Book No. 1206, at Page 455, Tract 3; Deed Book No. 1233, at Page 492, Tracts 4, 36, 47 and 48; and Deed Book No. 1246, at Page 545.

**PARCEL 2:** That certain parcel described in that certain Plat of Survey recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1331, at Page 228, more particularly bounded and described as follows: BEGINNING at a 5/8 inch iron rod in the northern right-of-way line of Yoke Street (formerly a 16 foot alley) and at the southern corner of Parcel 1 described above; thence N. 47° 39' 32" E. 279.08 feet with said Parcel 1 to a 5/8 inch iron rod; thence S. 42° 20' 18" E. 92.00 feet with Stillman to a PK main in the western right-of-way line of Falling Run Road, found; thence S. 57° 16' 02" W. 252.14 feet with the said western right-of-way of Falling Run Road to a point in the said northern right-of way line of Yoke Street; thence N. 73° 43' 58" W. 58.49 feet with the said northern right-of-way line of Yoke Street to the place of BEGINNING, containing 18,403 square feet (0.422 acres), more or less, as surveyed in October, 2006, by Alpha Associates, Incorporated, Morgantown, West Virginia.

The parcel of land hereinabove described is a portion of that same real estate conveyed unto McCoy 6 Apartments Limited Liability Company by three deeds of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1206, at Page 455, Tract 3; Deed Book No. 1233, at Page 492, Tracts 36, 47, and 48; and Deed Book No. 1246, at Page 545.

The above-described Parcel 1 and Parcel 2 are also alternatively described as set forth as follows:

A parcel of land in Morgantown Corporation, Monongalia County, West Virginia, located between the intersection of Yoke Street and Mason Street and the intersection of Falling Run Road and Yoke Street, more particularly described as follows: BEGINNING at a PK nail, set, at intersection of the northeastern right-of-way limits of Yoke Street and the southeastern right-of-way limits of Mason Street from which a rebar with a cap, found, bears S. 76° 40' 20" W. at 32.78 feet and also from which a ½ inch rebar, found, bears N. 26° 34' 20" E. at 44.45 feet; thence with the southeastern right-of-way limits of Mason Street, N. 47° 40' 00" E. at 337.71 feet crossing a nail in a log, found, in all 339.71 feet to a 5/8 inch rebar, set, a corner to Stillman Investment Limited Liability Company; thence with said Stillman Investments for three

lines, S. 42° 42' 00" E. 81.00 feet to a 5/8 inch rebar, set; thence S. 47° 40' 00" W. 2.00 feet to a 5/8 inch rebar, set; thence 42° 20' 00" E. 101.00 feet to a PK nail, set, in the sidewalk, in the right-of-way of Falling Run Road; thence with a line through said right-of-way of Falling Run Road, S. 57° 16' 20" W. 254.41 feet to a PK nail, set, on the northeastern right-of-way limits of Yoke Street; thence with said limits of Yoke Street, N. 74° 14' 00" W. 154.38 feet to the point of BEGINNING, containing 1.06 acres, more or less, as surveyed during November, 2006, by Surveyor and Associates, Inc., Kingwood, West Virginia.

**PARCEL 3:** A parcel of land in the Fifth Ward of the City of Morgantown, Monongalia County, West Virginia, more particularly bounded and described as follows: BEGINNING at a point in the eastern right-of-way line of Falling Run Road and in the line of McCoy 6 Apartments, LLC (Tax Map 20, Parcel 519); thence with said eastern right-of-way line of Falling Run Road three (3) calls, N. 41° 56' 02" E. 61.51 feet to a point; thence N. 45° 12' 06" E. 20.73 feet to a point; thence N. 61° 30' 42" E. 36.04 feet to a point in the line of McCoy 6 Apartments, LLC (Tax Map 20, Parcel 517); thence leaving said eastern right-of-way line of Falling Run Road S. 48° 17' 41" W. 116.74 feet to a point; thence N. 71° 32' 34" W. 0.35 feet to the place of BEGINNING, containing 530 square feet (0.012 acre), more or less, shown as "to be conveyed from McCoy 6 Apartments, LLC to Augusta Apartments, LLC" on Exhibit 1 to Ordinance dated November, 2006, prepared by Alpha Associates, Incorporated, Morgantown, West Virginia.

The parcel of land hereinabove described is a portion of that same real estate conveyed unto McCoy 6 Apartments, LLC by deed from Monroe P. Warner, individually; Kristian E. Warner, individually; Benjamin F. Warner, individually; and Andrew M. Warner, individually, of record in said Clerk's Office in Deed Book No. 1233, at Page 492, Tracts 29, 34, and 35.

**PARKING PARCELS:**

**PARCEL NO. 1:** A parcel of land in the Fifth Ward of the City of Morgantown, Monongalia County, West Virginia, bounded by McCoy 6 Apartments, LLC to the west, north and east and Outlook Street to the south, and being Lots 46, 47, 48, 49 and 50. Block 6, of University Place No. 2, a plat of which is of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 189, at Page 504½, more particularly bounded and described as follows:

BEGINNING at an iron pin, being a 5/8 inch iron rod set on the northerly right-of-way line of Outlook Street (platted 25' RW), being the corner for Lots 50 and 51; thence N. 55° 32' 57" W. 100.00 feet with said Lot 51 to a 5/8 inch iron rod set on the line of McCoy 6 Apartments, LLC; thence N. 34° 27' 03" E. 150.00 feet along line of McCoy 6 Apartments, LLC to a 5/8 inch iron rod set, being a point on the southerly line of McCoy 6 Apartments, LLC Lot 9 and the northeast corner to Lot 46; thence S. 55° 32' 57" E. 100.00 feet with McCoy 6 Apartments, LLC to a 5/8 inch iron rod set on the northerly right-of-way line of Outlook Street, being the corner for Lots 45 and 46; thence S. 34° 27' 03" W. 150.00 feet with the said northern right-of-way line of Outlook Street to the point of BEGINNING, containing 15,000 square feet (0.34 acre), more or less.

And being the same real estate conveyed to McCoy 6 Apartments, LLC a West Virginia limited liability company, by deed from KTA Properties, LLC, a West Virginia limited liability company, dated February 26, 2003, of records in said Clerk's office in Deed Book No. 1245, at Page 393.

**PARCEL NO. 2:** A parcel of land in the Fifth Ward of the City of Morgantown, Monongalia County, West Virginia, bounded by McCoy 6 to the west, West Virginia University and W. R. Moore to the north N/F Griesbaum to the east and Outlook Street to the south, and being Lots 32, 33, 34, 35, 36, 37, 38 and 39, Block 6, of University Place No. 2, a plat of which is of record in said Clerk's Office in Deed Book No. 189, at Page 504½, more particularly bounded and described as follows:

BEGINNING at an iron pin, being a 5/8 inch iron rod set on the northerly right-of-way line of Outlook Street (platted 25' RW), being the corner for Lots 39 and 40; thence N. 24° 39' 53" W. 100.00 feet with said Lot 40 to a 5/8 inch iron rod set in the line of WVU; thence N. 59° 18' 02" E. 240.00 feet along WVU Lots, 18, 19, 20, 21 and 22 and W.R. Moore Lots 23, 24 and 25 to a 5/8 inch iron rod set, being a common corner on the southerly line of W. R. Moore lot 25 and the westerly line of N/F Griesbaum Lot 31; thence S. 24° 39' 53" E. 100.00 feet with N/F Griesbaum to a 5/8 inch iron rod set on the northerly right-of-way line of Outlook Street, being the corner for Lots 31 and 32; thence S. 59° 18' 02" W. 240.00 feet with the said northern right-of-way line of Outlook Street to the point of BEGINNING, containing 23,867 square feet (0.55 acres), more or less.

And being the same real estate conveyed to McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by correction deed from George Herold Berthy, Jr. dated November 17, 2006, of record in said Clerk's office in Deed Book No. 1330, at Page 108, for Lots 32, 33, 34 and 35; and by deed from Frank Ferrell dated January 11, 2006, of record in said Clerk's office in Deed Book No. 1311, at Page 113, for Lots 36, 37, 38 and 39.

**PARCEL NO. 3:** A parcel of land in the Fifth Ward of the City of Morgantown, Monongalia County, West Virginia, bounded by N/F Myers to the west, City of Morgantown and Falling Run Road to the north, and Outlook Street to the east and south, and being Lots 3, 4, 5, 6, 7 and 8, Block 4, of the Wilson Addition to University Place No. 2, a plat of which is of record in said Clerk's office in Deed Book No. 300, at Page 467, more particularly bounded and described as follows:

BEGINNING at an iron pin, being a 5/8 inch iron rod set on the northerly right-of-way line of Outlook Street (platted 25' RW), being the southwest corner for Lot 3 of lands N/F Myers Lot 2; thence N. 24° 19' 51" W. 80.14 feet with the easterly line of Lot 2 to a 5/8 inch iron rod set and being a common corner for lands N/F Myers Lot 2, Bailes Lot 10, and the City of Morgantown Lot 11; thence N. 59° 38' 46" E. 75.42 feet to a 5/8 inch iron rod set and being a common corner to Lots 5 and 13; thence N. 24° 18' 01" W. 118.81 feet along the easterly line of Lot 13 to a concrete monument found on the southerly right-of-way line of Falling Run Road; thence N. 87° 15' 26" E. 128.46 feet along the southerly right-of-way line of Falling Run Road to a 5/8 inch iron rod set on the southerly right-of-way line of Falling Run Road and the westerly right-of-way line of Outlook Street, being the northeast corner of Lot 8; thence S. 24° 19' 14" E. 84.07 feet along the westerly right-of-way line of Outlook Street to a 5/8 inch rod set on the westerly right-of-way line of Outlook Street; thence on a chord bearing of S. 17° 02' 21" W. with a chord length of 33.78 feet (for a curve having a radius of 35 feet and an arc length of 37.09 feet) to a 5/8 inch iron rod set on the northerly right-of-way line of Outlook Street; thence S. 59° 48' 13" W. 128.34 feet along the northerly right-of-way line of Outlook Street to the point of BEGINNING, containing 15, 349 square feet (.035 acres) more or less.

And being the same real estate conveyed to McCoy 6 Apartments, LLC by deed from Roy L. Hall and Victoria J. Hall

dated June 20, 2002, of record in said Clerk's office in Deed Book No. 1234, at Page 346, for Lots 3, 4, 5, 6, 7 and 8.

**PARCEL NO. 4:** A parcel of land in the Fifth Ward of the City of Morgantown, Monongalia County, West Virginia, bounded by Maust and Rockis to the west, Outlook Street to the north, Cleaver Street to the east and Alley "A" to the south, being Lots 7, 8, 9, 10, 11, and 12 of the Fife Addition, a plat of which is of record in said Clerk's office in Deed Book No. 68, at Page 99, more particularly bounded and described as follows:

BEGINNING at an iron pin, being a 5/8 inch iron rod set on the southerly right-of-way of Outlook Street (platted 25' RW), being the northwest corner for Lot 12 and the northeast corner of Rockis Lot 13; thence N. 59° 18' 02" E. 256.00 feet with the southerly right-of-way line of Outlook Street to a 5/8 inch iron rod set on the westerly right-of-way of Cleaver Street (undeveloped); thence S. 24° 07' 10" E. 92.61 feet with the westerly right-of-way line of Cleaver Street to a 5/8 inch iron rod set, being a point on the northerly line of Alley "A"; thence S. 65° 14' 04" W. 245.80 feet with the northerly line of Alley "A" to a 5/8 inch iron rod set, being the southwest corner for Lot 12 and a common corner for Maust and Rockis Lot 13; thence N. 31° 28' 43" W. 66.59 feet with the eastern line of Rockis Lot 13 to the point of BEGINNING, containing 19,903 square feet (0.46 acres), more or less.

And being the same real estate conveyed to McCoy 6 Apartments, LLC by deed from Frank Ferrell dated January 11, 2006, of record in said Clerk's office in Deed Book No. 1311, at Page 113, for Lots 8, 9, 10, 11 and 12; and deed from Lucile J. Madiera dated May 16, 2002, of record in said Clerk's office in Deed Book No. 1232, at Page 59, for Lot 7.

**PARCEL NO. 5:** A parcel of land in the Fifth Ward of the City of Morgantown, Monongalia County, West Virginia, bounded by Cleaver Street to the west, Outlook Street to the north, an alley to the east, and Geneva Street to the south, and being Lots 1, 2, 3, 4, 5 and 6, Block 3, of the Wilson Addition to University Place No. 2, a plat of which is of record in said Clerk's office in Deed Book No. 300, at Page 467, more particularly bounded and described as follows:

BEGINNING at an iron pin, being a 1/2 inch iron rod found on the southerly right-of-way line of Outlook Street (platted 25' RW), being the northwest corner for Lot 1; thence N. 59° 48' 13" E. (said line passes through a concrete monument standing at a

distance of 67.04 feet from the P.O.B.) 184.50 feet with the southerly right-of-way line of Outlook Street to a ½ inch iron rod found on the southerly right-of-way line of Outlook Street; thence on a chord bearing S. 71° 57' 08" E. a chord length of 22.40 feet (for a curve having a radius of 15 feet and an arc length of 25.29 feet) to a ½ inch iron rod found on the westerly right-of-way line of an alley; thence S. 27° 08' 05" E. 104.21 feet along the westerly right-of-way line of an alley to a ½ inch iron rod found on the westerly right-of-way line of an alley and the northerly right-of-way line of Geneva Street; thence on a chord bearing of S. 24° 24' 20" W. a chord length of 22.50 feet (for a curve having a radius of 15 feet and an arc length of 25.45 feet) to a ½ inch iron rod found on the northerly right-of-way line of Geneva Street; thence S. 72° 59' 17" W. 171.40 feet with the northerly right-of-way line of Geneva Street to a ½ inch iron rod found on the northerly right-of-way line of Geneva Street and the easterly right-of-way line of Cleaver Street; thence on a chord bearing of N. 65° 34' 30" W. a chord length of 19.86 feet (for a curve having a radius of 15 feet and an arc length of 21.17 feet) to a ½ inch iron rod found on the easterly right-of-way of Cleaver Street; thence N. 24° 07' 10" W. 78.52 feet along the easterly right-of-way line of Cleaver Street to the point of BEGINNING, containing 22,827 square feet (0.52 acres), more or less.

And being the same real estate conveyed to McCoy 6 Apartments, LLC by deed from Charles E. Cottrill, Jr. and Lu Ann Cottrill, husband and wife and Charles A. Cottrill, single, dated May 18, 2000, of record in said Clerk's office in Deed Book No. 1199, at Page 368, for Lots 1, 2, 3, 4, 5 and 6.

Together with a right-of-way and easement for the purpose of installing underground utilities, including, but not limited to, sewage, storm water drainage, water, electric, gas, telephone and cable television, including the right to construct, lay, operate, maintain, remove, reconstruct, replace or repair lines, pipelines, drainage areas, or any such area required to carry or transport utilities in, on, over, under and through those three certain parcels situate in the Fifth Ward, City of Morgantown, described as follows:

a. Part of Lot No. 8 and part of Lot No. 7, in Block B, Fife Addition to the City of Morgantown, further described as Tract No. 34 in that deed of record in said Clerk's office in Deed Book No. 1233, at Page 492.

b. Lot Nos. 1 and 2, Block 6, of University Place No. 2, further described as Tract No. 29 in that deed of record in said Clerk's office in Deed Book No. 1233, at Page 492.

c. Part of Lot No. 8, Block B, Fife Addition to the City of Morgantown, further described as Tract No. 35 in that deed of record in said Clerk's office in Deed Book No. 1233, at Page 492.

It is hereby expressly understood and agreed that the right-of-way and easement hereby conveyed is made subject to any and all rights of the city of Morgantown to further develop, widen, relocate or repair the street commonly known as Falling Run Road.

Together with an eight foot (8') right-of-way and easement for ingress, egress and regress for the purpose of pedestrian access, including the right to build, construct, maintain and repair a structure intended for pedestrian use, which may take the form of, but is not limited in form to, a walkway or stairway on, over, under and through the most southwesterly portion of that certain parcel situate in the Fifth Ward, City of Morgantown, known as Lot No. 6, Block 6, University Place No. 2, further described as Tract No. 31 in that deed of record in said Clerk's office in Deed Book No. 1233, at Page 492 (which eight foot (8') easement is along the boundary with Lot No. 5, Block 6, in said Plan).

And being the same real estate conveyed to Augusta Apartments, LLC, a West Virginia limited liability company, from McCoy 6 Apartments Limited Liability Company, a West Virginia limited liability company, by Deed dated December 13, 2006, and recorded in the aforesaid County Clerk's Office in Deed Book 1331 at Page 289.

**SCHEDULE 1.1(b)**

**Description of McCoy 6 Real Estate**

That certain parcel of land in the Fifth Ward to the City of Morgantown, Monongalia County, West Virginia, bounded by Augusta Apartments, LLC to the north, McCoy 6 Apartments, LLC to the south and east, and City of Morgantown Building Commission to the west, and being a portion of the City of Morgantown Tax Map 20 Parcels 516-519 and Parcel 654, more particularly bounded and described as follows:

Beginning at an iron pin being a 5/8 inch iron rod set this survey in the southern right-of-way line of Falling Run Road (platted 30' RW); thence N. 45° 29' 07" E, 5.21 feet to a magnail set this survey; thence N. 48° 17' 41" E, 116.74 feet to a pin set this survey in the southern right-of-way line of Falling Run Road; thence N. 61° 30' 42" E, 108.40 feet to a point; thence S 16° 59' 50" W, 14.01 feet to a point; thence on a chord bearing of S. 32° 40' 49" W, 108.12 feet (for a curve having a radius of 200 feet and an arch length of 109.49 feet to a point; thence S 48° 21' 47" W, 98.91 feet to a point; thence S 69° 19' 11" W, 12.66 feet to a point; thence N. 42° 21' 14" W, 56.26 feet to the point of beginning, containing 11,183 square feet (0.26 acre), more or less, and as shown as Parcel A on a Plat of Survey dated June 13, 2011, prepared by Alpha Associates, Incorporated, Morgantown, West Virginia, entitled Plat of Survey for WVU Board of Governors, Plat No. 3: Plat of Survey of Property to be Conveyed From McCoy 6 Apartments Limited Liability Company and Right of Way and Easement to be Conveyed From Morgantown Building Commission.

## SCHEDULE 1.1(c)

### **Tangible Personal Property**

- A. Each of the one bedroom apartments contains the following furniture and appliances:
  - 1. Refrigerator, Dishwasher, Microwave, Electric stovetop/oven;
  - 2. Bed and mattress;
  - 3. Couch and coffee table;
  - 4. Desk chair and two small two drawer dressers;
  - 5. Modem and two cable boxes.
- B. Each of the two bedroom apartments contains the following furniture and appliances:
  - 1. Refrigerator, Dishwasher, Microwave, Electric stovetop/oven and at least two bar stools;
  - 2. Two beds and mattresses;
  - 3. Couch, Chair and Coffee table;
  - 4. Two desk chairs and four small two drawer dressers ;
  - 5. Modem and two cable boxes.
- C. The on-site apartment office contains the following office equipment:
  - 1. 4 computers, 2 printer/scanners, and 1printer/scanner/fax machine unit, 4 phones;
  - 2. 4 chairs, 3 desks, 1 large file cabinet, 2 multi function file/office cabinets, 2 mini file cabinets mini refrigerator, toast oven, microwave;
  - 3. Two key storage boxes.
- D. All cleaning and maintenance materials, supplies and equipment in storage on-site in both buildings.
- E. On site laundry rooms.
  - 1. Building 49 has laundry rooms on floors 2, 3 and 5
    - a. 2<sup>nd</sup> floor has 2 washing machines and 2 dryers
    - b. 3<sup>rd</sup> floor has 3 washing machines and 2 dryers
    - c. 5<sup>th</sup> floor has 2 washing machines and 2 dryers
  - 2. Building 51 has a central ground laundry room housing 9 washing machines and 8 dryers
- F. There are a total of 12 vending machines disbursed between the two building
- G. Both building have a light conditioning/fitness area
  - 1. Building 49 has 2 treadmills and 2 elliptical machines
  - 2. Building 51 has 1 treadmill and 2 elliptical machines

**SCHEDULE 1.1(e)**

**Permits, Licenses, Etc.**

**None**

**SCHEDULE 3.8**

**Option Property**

**See Parcel A on Plat No. 6 attached**



### SCHEDULE 5.3

#### **Liens and Other Encumbrances**

##### AUGUSTA LIENS AND ENCUMBRANCES:

1. Declaration and Designation and Conveyance of Permanent Open Space agreement dated June 24, 2010 by Augusta Apartments, LLC, and of record in the aforesaid County Clerk's Office in Deed Book 1416, at Page 191.

2. Unreleased Assignment of Rents and Leases dated April 24, 1997, and of record in the aforesaid County Clerk's Office in Assignment Book 46, at Page 621, from Gary C. Walden and Tina M. Walden to secure United National Bank in the principal amount of \$65,000.00. This Assignment of Leases and Rents is secured by part of Lots 9 & 10 Hoffman Addition (61 Yoke Street) (part of our subject property) and Lot 13, Block A University Place #1 (68 Yoke Street), thus the subject property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 420 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 420.1 (Pt Lots 9 & 10 Hoffman Add) and Map 20, Parcel 421 (Pt Lots 9 & 10 Hoffman Add). The coordinating Deed of Trust recorded in Trust Deed Book 844, at Page 523 was released by Release recorded in Release Book 294, at Page 355, however, this Assignment of Rents and Leases was not released by this release instrument.

3. Unreleased Abstract of Judgment dated September 16, 2005, and of record in Judgment Book 36, at Page 519, whereby a Judgment was entered on August 24, 2005 against George Herold Berthy, Jr. in favor of the State of West Virginia in the amount of \$500.00 plus court costs of \$123.50 plus interest at a rate of 10% from date of judgment. (Magistrate Court of Kanawha County, West Virginia, Case No. 04M-7314). The subject property which remains unreleased and secured by this Abstract of Judgment is: (Parking Parcels, Part of Parcel No. 2 being Lots 32, 33, 34 and 35, Block 6, University Place No. 2), which is assessed as Map 20, Parcel 506 (BL 6, Lot 33), and Map 20, Parcel 506.1 (BL 6, Lot 32, 34 & 35).

4. Unreleased Abstract of Judgment dated September 16, 2005, and of record in Judgment Book 36, at Page 520, whereby a Judgment was entered on August 24, 2005 against George Herold Berthy, Jr. in favor of the State of West Virginia in the amount of \$500.00 plus court costs of \$123.50 plus interest at a rate of 10% from date of judgment. (Magistrate Court of Kanawha County, West Virginia, Case No. 04M-7313). The subject property which remains unreleased and secured by this Abstract of Judgment is: (Parking Parcels, Part of Parcel No. 2 being Lots 32, 33, 34 and 35, Block 6, University Place No. 2), which is assessed as Map 20, Parcel 506 (BL 6, Lot 33), and Map 20, Parcel 506.1 (BL 6, Lot 32, 34 & 35).

5. Unreleased Credit Line Deed of Trust dated December 13, 2006, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1520, at Page 532, whereby Augusta Apartments, LLC conveyed the subject property to Charles B. Dollison, Trustee, to secure National City Bank in the amount not to exceed \$20,648,000.00. This deed of trust is secured by the subject property. The coordinating tax assessments are as follows: Map 20, Parcel 420 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 420.1 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 421 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 422 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 422.1 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 423 (Pt Lot 8 Hoffman Add), Map 20, Parcel 423.1 (Pt Lot 8 Hoffman Add), Map 20, Parcel 424 (Pt Lot 7 Hoffman Add), Map 20, Parcel 424.1 (Pt Lot 7 Hoffman Add), Map 20, Parcel 425 (Pt Lot 6

Hoffman Add), Map 20, Parcel 425.1 (Pt Lot 6 Hoffman Add), Map 20, Parcel 426.1 (Pt Lot 6 & Strips Hoffman Add), Map 20, Parcel 501 (BL 4, Lots 3 to 8 incl Wilson Add), Map 20, Parcel 506 (BL 6, Lot 33 University Pl #2), Map 20, Parcel 506.1 (BL 6, Lot 32, 34 & 35 University Place #2), Map 20, Parcel 507.1 (BL 6, Lots 36, 37, 38 & 39 University Place #2), Map 20, Parcel 515 (BL 6, Lots 46 to 50 Inc Univ Place #2), Map 20, PART OF Parcel 517 (BL 6, Lots 1, 2 Univ Plan #2), Map 20, PART OF Parcel 518 (BL B, Lot Pt 8), Map 20, PART OF Parcel 519 (BL B, Lot Pt 7, 8), Map 20, PART OF Parcel 654 (Parts of Annulled Rainy Street), Map 20, Parcel 659 (0.12 Ac or 530 Sq Ft), Map 20, Parcel 555 (BL 13 Lots 8, 9, 10, 11, 12 Fife Add), Map 20, Parcel 556 (Lot 7 Fife Add), Map 20, Parcel 557 (BL 3, Lots 1 to 6 Incl Wilson Add), Map 20, PART OF Parcel 514(BL 6, Lot 6 Univ Pl #2) and the Parcels to be Annulled (Parcel A (0.037 acre), Parcel B (0.100 acre) and Parcel C (0.014 acre)).

6. Unreleased Assignment of Leases and Rents dated December 13, 2006, and of record in the aforesaid County Clerk's Office in Assignment Book 94, at Page 666, whereby Augusta Apartments, LLC conveyed the subject property to secure National City Bank in the amount not to exceed \$20,648,000.00. This deed of trust is secured by the subject property. The coordinating tax assessments are as follows: Map 20, Parcel 420 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 420.1 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 421 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 422 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 422.1 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 423 (Pt Lot 8 Hoffman Add), Map 20, Parcel 423.1 (Pt Lot 8 Hoffman Add), Map 20, Parcel 424 (Pt Lot 7 Hoffman Add), Map 20, Parcel 424.1 (Pt Lot 7 Hoffman Add), Map 20, Parcel 425 (Pt Lot 6 Hoffman Add), Map 20, Parcel 425.1 (Pt Lot 6 Hoffman Add), Map 20, Parcel 426.1 (Pt Lot 6 & Strips Hoffman Add), Map 20, Parcel 501 (BL 4, Lots 3 to 8 incl Wilson Add), Map 20, Parcel 506 (BL 6, Lot 33 University Pl #2), Map 20, Parcel 506.1 (BL 6, Lot 32, 34 & 35 University Place #2), Map 20, Parcel 507.1 (BL 6, Lots 36, 37, 38 & 39 University Place #2), Map 20, Parcel 515 (BL 6, Lots 46 to 50 Inc Univ Place #2), Map 20, PART OF Parcel 517 (BL 6, Lots 1, 2 Univ Plan #2), Map 20, PART OF Parcel 518 (BL B, Lot Pt 8), Map 20, PART OF Parcel 519 (BL B, Lot Pt 7, 8), Map 20, PART OF Parcel 654 (Parts of Annulled Rainy Street), Map 20, Parcel 659 (0.12 Ac or 530 Sq Ft), Map 20, Parcel 555 (BL 13 Lots 8, 9, 10, 11, 12 Fife Add), Map 20, Parcel 556 (Lot 7 Fife Add), Map 20, Parcel 557 (BL 3, Lots 1 to 6 Incl Wilson Add), Map 20, PART OF Parcel 514(BL 6, Lot 6 Univ Pl #2) and the Parcels to be Annulled (Parcel A (0.037 acre), Parcel B (0.100 acre) and Parcel C (0.014 acre)).

7. Unreleased UCC Financing Statement recorded December 14, 2006, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1520, at Page 572, whereby Augusta Apartments, LLC conveyed the subject property to secure National City Bank in the amount not to exceed \$20,648,000.00. This deed of trust is secured by the subject property. The coordinating tax assessments are as follows: Map 20, Parcel 420 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 420.1 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 421 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 422 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 422.1 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 423 (Pt Lot 8 Hoffman Add), Map 20, Parcel 423.1 (Pt Lot 8 Hoffman Add), Map 20, Parcel 424 (Pt Lot 7 Hoffman Add), Map 20, Parcel 424.1 (Pt Lot 7 Hoffman Add), Map 20, Parcel 425 (Pt Lot 6 Hoffman Add), Map 20, Parcel 425.1 (Pt Lot 6 Hoffman Add), Map 20, Parcel 426.1 (Pt Lot 6 & Strips Hoffman Add), Map 20, Parcel 501 (BL 4, Lots 3 to 8 incl Wilson Add), Map 20, Parcel 506 (BL 6, Lot 33 University Pl #2), Map 20, Parcel 506.1 (BL 6, Lot 32, 34 & 35 University Place #2), Map 20, Parcel 507.1 (BL 6, Lots 36, 37, 38 & 39 University Place #2), Map 20, Parcel 515 (BL 6, Lots 46 to 50 Inc Univ Place #2), Map 20, PART OF Parcel 517 (BL 6, Lots 1, 2 Univ Plan #2), Map 20, PART OF Parcel 518 (BL B, Lot Pt 8), Map 20, PART OF Parcel 519 (BL B, Lot Pt 7, 8), Map 20, PART OF Parcel 654 (Parts of Annulled Rainy Street), Map 20, Parcel 659 (0.12 Ac or 530 Sq Ft), Map 20, Parcel 555 (BL 13 Lots 8, 9, 10, 11, 12 Fife Add), Map 20, Parcel 556 (Lot 7 Fife Add), Map 20, Parcel 557 (BL 3, Lots 1 to 6 Incl Wilson Add), Map 20, PART OF Parcel 514(BL 6, Lot 6 Univ Pl #2) and the Parcels to be Annulled (Parcel A (0.037 acre), Parcel B (0.100 acre) and Parcel C (0.014 acre)).

8. Unreleased Record Notice of Mechanic's Lien dated January 11, 2008, and of record in the aforesaid County Clerk's Office in Mechanics Lien Book 19, at Page 643, from CP&H, Inc. dba City Plumbing & Heating to Augusta Apartments LLC in the amount of \$101,958.47. *No civil action was filed.*

9. Unreleased Notice of Mechanic's Lien dated January 14, 2008, and of record in the aforesaid County Clerk's Office in Mechanics Lien Book 19, at Page 658, from Landau Building Company to Augusta Apartments LLC in the amount of \$2,283,317.90. This Notice of Mechanic's Lien was corrected and re-recorded in Mechanic's Lien Book 19, at Page 674. Civil Action was filed in the Circuit Court of Monongalia County, West Virginia – 08-C-219.

10. Unreleased Notice of Mechanic's Lien dated January 24, 2008, and of record in the aforesaid County Clerk's Office in Mechanics Lien Book 20, at Page 47, from Laurita Excavating, Inc. to Augusta Apartments LLC in the amount of \$383,284.27.

11. Unreleased Notice of Mechanic's Lien dated March 19, 2008, and of record in the aforesaid County Clerk's Office in Mechanics Lien Book 20, at Page 277, from F.K. Everest, Inc. to Augusta Apartments LLC in the amount of \$4,766.63 (The subject property of the Mechanic's Lien includes Map 20, Parcels 420, 426 and 426.1). Civil Action was filed in the Circuit Court of Monongalia County, West Virginia – 08-C-648.

12. Unreleased Notice of Tax Lien dated September 26, 2008, and of record in the aforesaid County Clerk's Office in State Tax Lien Book 47, at Page 12, against Augusta Apartments, LLC in favor of The State of West Virginia, Workforce West Virginia Unemployment Compensation Division in the amount of \$1,113.75, plus any and all penalties and interest.

13. Unreleased Notice of Tax Lien recorded October 3, 2008, and of record in the aforesaid County Clerk's Office in City Tax Lien Book 1, at Page 441, against Augusta Apartments LLC in favor of The City of Morgantown in the amount of \$6,531.30 plus any and all penalties and interest.

14. Unreleased Notice of Tax Lien dated December 15, 2008, and of record in the aforesaid County Clerk's Office in State Tax Lien Book 47, at Page 689, against Augusta Apartments, LLC in favor of The State of West Virginia, Workforce West Virginia Unemployment Compensation Division in the amount of \$1,169.44, plus any and all penalties and interest.

15. Unreleased Credit Line Deed of Trust, Fixture Filing and Assignment of Rents dated December 19, 2008, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1669, at Page 844, whereby Augusta Apartments, LLC conveyed the subject property and other additional collateral to Kristian J. Jamieson and Brian D. Gallagher, Trustees, to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. This entire deed of trust needs released with the exception of Map 20, Parcel 426 and Parcel 558 (BL L. Lots 4 - 11 Incl), which is property that is not included in our transaction. The coordinating tax assessments are as follows: Map 20, Parcel 420 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 420.1 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 421 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 422 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 422.1 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 423 (Pt Lot 8 Hoffman Add), Map 20, Parcel 423.1 (Pt Lot 8 Hoffman Add), Map 20, Parcel 424 (Pt Lot 7 Hoffman Add), Map 20, Parcel 424.1 (Pt Lot 7 Hoffman Add), Map 20, Parcel 425 (Pt Lot 6 Hoffman Add), Map 20, Parcel 425.1 (Pt Lot 6 Hoffman Add), Map 20, Parcel 426.1 (Pt Lot 6 & Strips Hoffman Add), Map 20, Parcel 501 (BL 4, Lots 3 to 8 incl Wilson Add), Map 20, Parcel 506 (BL 6, Lot 33 University Pl #2), Map 20, Parcel 506.1 (BL 6, Lot 32, 34 & 35 University Place #2), Map 20, Parcel 507.1 (BL 6, Lots 36, 37, 38 & 39 University Place #2), Map 20, Parcel 515 (BL 6, Lots 46 to 50 Inc Univ Place #2), Map 20, PART OF Parcel 517 (BL 6, Lots 1, 2 Univ Plan #2),

Map 20, PART OF Parcel 518 (BL B, Lot Pt 8), Map 20, PART OF Parcel 519 (BL B, Lot Pt 7, 8), Map 20, PART OF Parcel 654 (Parts of Annulled Rainy Street), Map 20, Parcel 659 (0.12 Ac or 530 Sq Ft), Map 20, Parcel 555 (BL 13 Lots 8, 9, 10, 11, 12 Fife Add), Map 20, Parcel 556 (Lot 7 Fife Add), Map 20, Parcel 557 (BL 3, Lots 1 to 6 Incl Wilson Add), and Map 20, PART OF Parcel 514 (BL 6, Lot 6 Univ Pl #2).

16. Unreleased Collateral Assignment of Rents and Leases dated December 19, 2008, and of record in the aforesaid County Clerk's Office in Assignment Book 103, at Page 445, whereby Augusta Apartments, LLC conveyed the subject property and other additional collateral to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. This entire deed of trust needs released with the exception of Map 20, Parcel 426, which is property that is not included in our transaction. This entire deed of trust needs released with the exception of Map 20, Parcel 426 and Parcel 558 (BL L. Lots 4 – 11 Incl), which is property that is not included in our transaction. The coordinating tax assessments are as follows: Map 20, Parcel 420 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 420.1 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 421 (Pt Lots 9 & 10 Hoffman Add), Map 20, Parcel 422 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 422.1 (Pt Lots 8 & 9 Hoffman Add), Map 20, Parcel 423 (Pt Lot 8 Hoffman Add), Map 20, Parcel 423.1 (Pt Lot 8 Hoffman Add), Map 20, Parcel 424 (Pt Lot 7 Hoffman Add), Map 20, Parcel 424.1 (Pt Lot 7 Hoffman Add), Map 20, Parcel 425 (Pt Lot 6 Hoffman Add), Map 20, Parcel 425.1 (Pt Lot 6 Hoffman Add), Map 20, Parcel 426.1 (Pt Lot 6 & Strips Hoffman Add), Map 20, Parcel 501 (BL 4, Lots 3 to 8 incl Wilson Add), Map 20, Parcel 506 (BL 6, Lot 33 University Pl #2), Map 20, Parcel 506.1 (BL 6, Lot 32, 34 & 35 University Place #2), Map 20, Parcel 507.1 (BL 6, Lots 36, 37, 38 & 39 University Place #2), Map 20, Parcel 515 (BL 6, Lots 46 to 50 Inc Univ Place #2), Map 20, PART OF Parcel 517 (BL 6, Lots 1, 2 Univ Plan #2), Map 20, PART OF Parcel 518 (BL B, Lot Pt 8), Map 20, PART OF Parcel 519 (BL B, Lot Pt 7, 8), Map 20, PART OF Parcel 654 (Parts of Annulled Rainy Street), Map 20, Parcel 659 (0.12 Ac or 530 Sq Ft), Map 20, Parcel 555 (BL 13 Lots 8, 9, 10, 11, 12 Fife Add), Map 20, Parcel 556 (Lot 7 Fife Add), and Map 20, Parcel 557 (BL 3, Lots 1 to 6 Incl Wilson Add), Map 20, PART OF Parcel 514 (BL 6, Lot 6 Univ Pl #2).

17. Unreleased Abstract of Judgment dated January 22, 2009, and of record in Judgment Book 45, at Page 760, whereby a Judgment was entered on December 29, 2008 against Augusta Apartments, LLC in favor of the A-One Cleaning Services, Inc. in the amount of \$14,446.61 plus court costs of \$160.00 plus interest at a rate of 8.25% from date of judgment. (Circuit Court of Monongalia County, West Virginia, Case No. 08-C-866).

18. Unreleased Abstract of Judgment dated February 24, 2009, and of record in Judgment Book 45, at Page 833, whereby a Judgment was entered on December 24, 2008 against Augusta Apartments, LLC in favor of the CTL Engineering in the amount of \$3,661 plus court costs of \$96.50 plus interest at a rate of 8.25% from date of judgment. (Circuit Court of Monongalia County, West Virginia, Case No. 08-C-1827).

19. Unreleased Notice of Tax Lien dated June 5, 2009, and of record in the aforesaid County Clerk's Office in State Tax Lien Book 48, at Page 314, against Augusta Apartments, LLC in favor of The State of West Virginia, State Tax Department in the amount of \$1,106.78, plus any and all penalties and interest.

20. Unreleased Abstract of Judgment dated August 12, 2009, and of record in Judgment Book 47, at Page 615, whereby a Judgment was entered on July 28, 2009 against Augusta Apartments, LLC in favor of the Landau Building Company in the amount of \$2,000,000 plus court costs of \$185.00 plus interest at a rate of 7.00% from date of judgment. (Circuit Court of Monongalia County, West Virginia, Case No. 09-C-408).

21. Unreleased Notice of Tax Lien dated February 5, 2010, and of record in the aforesaid County Clerk's Office in State Tax Lien Book 49, at Page 452, against Augusta Apartments, LLC in favor of The State of West Virginia, State Tax Department in the amount of \$187.19, plus any and all penalties and interest.

**MCCOY 6 LIENS AND ENCUMBRANCES:**

22. Unreleased Consent and Modification Agreement dated February 26, 2003, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1172, at Page 257, by and among McCoy 6 Apartments, Limited Liability Company, Kristian E. Warner, Benjamin F. Warner, Andrew M. Warner and Monroe P. Warner, Grantors, and First United Bank & Trust, Lender. The coordinating Deed of Trusts recorded in Trust Deed Book 1138, at Page 457 was released by Release recorded in Release Book 369, at Page 143, and recorded in Trust Deed Book 1172, at Page 229, was released by Release recorded in Release Book 374, at Page 63, however, this Consent and Modification Agreement was not released by either of these release instruments.

23. Unreleased Credit Line Deed of Trust dated December 30, 2005, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1438, at Page 196, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to George B. Armistead, Trustee, to secure First United Bank & Trust in an amount not to exceed \$1,400,000.00. This Deed of Trust was subordinated unto that certain Credit Line Deed of Trust dated May 12, 2006, of record in the aforesaid County Clerk's Office in Trust Deed Book 1466, at Page 290, by Subordination Agreement dated May 12, 2006, of record in the aforesaid County Clerk's Office in Assignment Book 92, at Page 367. Partial Releases were recorded in Release Book 374, at Page 63 and Release Book 384, at Page 545. However, the subject property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 516 (Block 6, Lots 3 – 5); Map 20, Parcel 517 (Block 6, Lot 1); Map 20, Parcel 518 (Block B, Lot Pt 8); and Map 20, Parcel 519 (Block B, Lot Pt 7 & 8). Portions of these Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS as well as PARCEL 3 OF THE AUGUSTA DEED (the 530 Square Foot Parcel now assessed as Parcel 659 but was assessed at the time of this deed of trust as Part of Parcels 517, 518 and 519).

24. Unreleased Assignment of Rents dated December 30, 2005, and of record in the aforesaid County Clerk's Office in Assignment Book 90, at Page 456, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to secure First United Bank & Trust in an amount not to exceed \$1,400,000.00. A Partial Release was recorded in Release Book 384, at Page 545. However, the subject property which remains unreleased and secured by this Assignment of Rents is: Map 20, Parcel 516 (Block 6, Lots 3 – 5); Map 20, Parcel 517 (Block 6, Lot 1); Map 20, Parcel 518 (Block B, Lot Pt 8); and Map 20, Parcel 519 (Block B, Lot Pt 7 & 8). Portions of these Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS as well as PARCEL 3 OF THE AUGUSTA DEED (the 530 Square Foot Parcel now assessed as Parcel 659 but was assessed at the time of this deed of trust as Part of Parcels 517, 518 and 519).

25. Unreleased Credit Line Deed of Trust dated May 12, 2006, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1466, at Page 290, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to William H. Judy III, Trustee, to secure First United Bank & Trust in an amount not to exceed \$3,052,000.00. Partial Releases were recorded in Release Book 374, at Page 63 and Release Book 384, at Page 545. However, the subject property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 516 (Block 6, Lots 3 – 5); Map

20, Parcel 517 (Block 6, Lot 1); Map 20, Parcel 518 (Block B, Lot Pt 8); Map 20, Parcel 519 (Block B, Lot Pt 7 & 8); and Map 20, Parcel 558 (Lots 4 – 11, Block 1 of the Wilson Addition to University Place No. 2). Portions of these Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS, PARCEL 3 OF THE AUGUSTA DEED (the 530 Square Foot Parcel now assessed as Parcel 659 but was assessed at the time of this deed of trust as Part of Parcels 517, 518 and 519).

26. Unreleased Assignment of Rents dated May 12, 2006, and of record in the aforesaid County Clerk's Office in Assignment Book 92, at Page 378, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property to secure First United Bank & Trust in an amount not to exceed \$3,052,000.00. Partial Releases were recorded in Release Book 374, at Page 63 and Release Book 384, at Page 545. However, the subject property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 516 (Block 6, Lots 3 – 5); Map 20, Parcel 517 (Block 6, Lot 1); Map 20, Parcel 518 (Block B, Lot Pt 8); Map 20, Parcel 519 (Block B, Lot Pt 7 & 8); and Map 20, Parcel 558 (Lots 4 – 11, Block 1 of the Wilson Addition to University Place No. 2). Portions of these Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS, PARCEL 3 OF THE AUGUSTA DEED (the 530 Square Foot Parcel now assessed as Parcel 659 but was assessed at the time of this deed of trust as Part of Parcels 517, 518 and 519).

27. Unreleased Deed of Trust dated December 13, 2006, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1520, at Page 360, whereby McCoy 6 Apartments Limited Liability Company and George W. Warner, Sr. by his Power of Attorney Benjamin F. Warner, conveyed a portion of the subject property and other additional collateral to William H. Judy III, Trustee, to secure First United Bank & Trust in the principal amount of \$4,000,000.00. The subject property which remains unreleased and secured by this Deed of Trust is: Map 20, Parcel 514 (Block 6, Lot 6); Map 20, Parcel 516 (Block 6, Lots 3 – 5); Map 20, Parcel 517 (Block 6, Lot 1); Map 20, Parcel 518 (Block B, Lot Pt 8); Map 20, Parcel 519 (Block B, Lot Pt 7 & 8); and Map 20, Parcel 558 (Lots 4 – 11, Block 1 of the Wilson Addition to University Place No. 2). Portions of these Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS, PARCEL 3 OF THE AUGUSTA DEED (the 530 Square Foot Parcel now assessed as Parcel 659 but was assessed at the time of this deed of trust as Part of Parcels 517, 518 and 519).

28. Unreleased Assignment of Rents dated December 13, 2006, and of record in the aforesaid County Clerk's Office in Assignment Book 94, at Page 630, whereby McCoy 6 Apartments Limited Liability Company and George W. Warner, Sr. by his Power of Attorney Benjamin F. Warner, conveyed a portion of the subject property and other additional collateral to secure First United Bank & Trust in the principal amount of \$4,000,000.00. A Partial Release was recorded in Release Book 384, at Page 545. However, the subject property which remains unreleased and secured by this Assignment of Rents is: Map 20, Parcel 514 (Block 6, Lot 6); Map 20, Parcel 516 (Block 6, Lots 3 – 5); Map 20, Parcel 517 (Block 6, Lot 1); Map 20, Parcel 518 (Block B, Lot Pt 8); Map 20, Parcel 519 (Block B, Lot Pt 7 & 8); and Map 20, Parcel 558 (Lots 4 – 11, Block 1 of the Wilson Addition to University Place No. 2). Portions of these Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS, PARCEL 3 OF THE AUGUSTA DEED (the 530 Square Foot Parcel now assessed as Parcel 659 but was assessed at the time of this deed of trust as Part of Parcels 517, 518 and 519).

29. Unreleased Credit Line Deed of Trust, Fixture Filing and Assignment of Rents dated December 19, 2008, and of record in the aforesaid County Clerk's Office in Trust Deed Book 1669, at Page 213, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property and other additional collateral to Kristian J. Jamieson and Brian D. Gallagher, Trustees, to secure

First United Bank & Trust in the amount not to exceed \$2,480,000.00. The parcels that will need to be released from this deed of trust include: Map 20, Parcel 516 (Block 6, Lots 3 – 5) and Map 20, Parcel 654 (annulled portion of Rainy Street) - Portions of these two Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS. In addition Map 20, Parcel 514 needs to be partially released as well (as it pertains to the eight foot (8') right of way and easement for ingress, egress and regress for the purpose of pedestrian access, including the right to build, construct, maintain and repair a structure intended for pedestrian use, which may take the form of, but is not limited in form to, a walkway or stairway on, over, under and through the most southwesterly portion of that certain parcel situate in the Fifth Ward, City of Morgantown, known as Lot No. 6, Block 6, University Place No. 2, further described as Tract No. 31 in that deed of record in said Clerk's office in Deed Book No. 1233, at Page 492 (which eight foot (8') easement is along the boundary with Lot No. 5, Block 6, in said Plan).

30. Unreleased Collateral Assignment of Rents and Leases dated December 19, 2008, and of record in the aforesaid County Clerk's Office in Assignment Book 103, at Page 300, whereby McCoy 6 Apartments Limited Liability Company conveyed a portion of the subject property and other additional collateral to secure First United Bank & Trust in the amount not to exceed \$2,480,000.00. The parcels that will need to be released from this deed of trust include: Map 20, Parcel 516 (Block 6, Lots 3 – 5) and Map 20, Parcel 654 (annulled portion of Rainy Street) - Portions of these two Parcels include THE NEW AREA THAT NEEDS TO BE CONVEYED TO COVER THE ENCROACHMENTS. In addition Map 20, Parcel 514 needs to be partially released as well (as it pertains to the eight foot (8') right of way and easement for ingress, egress and regress for the purpose of pedestrian access, including the right to build, construct, maintain and repair a structure intended for pedestrian use, which may take the form of, but is not limited in form to, a walkway or stairway on, over, under and through the most southwesterly portion of that certain parcel situate in the Fifth Ward, City of Morgantown, known as Lot No. 6, Block 6, University Place No. 2, further described as Tract No. 31 in that deed of record in said Clerk's office in Deed Book No. 1233, at Page 492 (which eight foot (8') easement is along the boundary with Lot No. 5, Block 6, in said Plan).

31. Unreleased Abstract of Judgment dated September 22, 2008, and of record in Judgment Book 45, at Page 406, whereby a Judgment was entered on July 30, 2008 against McCoy 6 Apartments in favor of Copies Copies Copies in the amount of \$713.06 plus court costs of \$80.00 plus interest at a rate of 8.25% from date of judgment. (Magistrate Court of Monongalia County, West Virginia, Case No. 08-C-755).

32. Unreleased Notice of Tax Lien recorded October 2, 2008, and of record in the aforesaid County Clerk's Office in City Tax Lien Book 1, at Page 439, against McCoy 6 Apartments Limited Liability Company in favor of The City of Morgantown in the amount of \$3,334.68 plus any and all penalties and interest.

33. Agreement dated November 8, 2005, and of record in the aforesaid County Clerk's Office in Deed Book 1312, at Page 344, by and between McCoy 6 Apartments Limited Liability Company and the City of Morgantown (Rainy Street property).

**LIENS AND ENCUMBRANCES AFFECTING BOTH AUGUSTA AND MCCOY 6 PROPERTIES:**

34. A Right of Way and Easement Agreement dated October 17, 2006, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1329, at Page 136; whereby McCoy 6 Apartments, LLC conveyed unto the City of Morgantown, acting

by and through the Morgantown Utility Board, a right of way and easement to construct, lay, operate, maintain, remove, reconstruct, replace or repair pipelines for the carrying and transporting of utilities.

35. A Right of Way and Easement Agreement dated October 17, 2006, and of record in the aforesaid Clerk's Office in Deed Book 1329, at Page 140, whereby McCoy 6 Apartments, LLC conveyed unto the City of Morgantown, acting by and through the Morgantown Utility Board, a right of way and easement to construct, lay, operate, maintain, remove, reconstruct, replace or repair pipelines for the carrying and transporting of utilities.

36. A Right of Way and Easement Agreement dated October 19, 2006, and of record in the aforesaid Clerk's Office in Deed Book 1329, at Page 144, whereby McCoy 6 Apartments, LLC conveyed unto the City of Morgantown, acting by and through the Morgantown Utility Board, a right of way and easement to construct, lay, operate, maintain, remove, reconstruct, replace or repair pipelines for the carrying and transporting of utilities.

37. A Right of Way and Easement Agreement dated October 19, 2006, and of record in the aforesaid County Clerk's Office in Deed Book 1329, at Page 148, whereby McCoy 6 Apartments, LLC conveyed unto the City of Morgantown, acting by and through the Morgantown Utility Board, a right of way and easement to construct, lay, operate, maintain, remove, reconstruct, replace or repair pipelines for the carrying and transporting of utilities.

38. Agreement dated November 1, 2004, and of record in the aforesaid County Clerk's Office in Deed Book 1332, at Page 174, by and among the City of Morgantown, Morgantown Building Commission, McCoy 6 Apartments Limited Liability Company and First United Bank & Trust.

**SCHEDULE 5.4**

**Compliance with Law**

**None.**

## SCHEDULE 5.7

### Conditions of Assets

- I. SURFACE WATER ISSUES. The surface water drainage system behind Building 51 is in need of repair. Specifically, downspouts are not properly connected at the roof gutters or at the connection to the drain openings; and the surface drain outlets are higher than the surface of the ground and thus are not properly draining water away from the building. As a result, water is flowing into the crawl space under Building 51.
- II. ELEVATOR REPAIRS. As a result of a January 29, 2011, incident involving late-night abuse by users of elevator # 2 in Building 51, the Morgantown City fire department mistakenly attempted to open Elevator # 1. Consequently, they broke a Phase 1 key switch for elevator # 1, and mistakenly forced open the doors of elevator #1 in Building 51, damaging the door opening motors and the control board.

**SCHEDULE 5.8**

**Legal Proceedings**

**None**

2

**SCHEDULE 5.10**

**Consents and Approvals**

**Purchaser's execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby are subject to approval by its governing board.**

**SCHEDULE 5.11**

**Intangible Property**

**None**

**SCHEDULE 8.6**

**2011 Ordinance**

**See Parcel A on Plat No. 4 attached**





ALPHA

ALPHA SYSTEMS, INC.
1000 W. 10TH AVENUE
DENVER, CO 80202
(303) 733-1100



STATE OF NEW YORK
OFFICE OF THE STATE ARCHITECT

FOR BOARD OF ARCHITECTS
PLEASE PRINT OR TYPE CLEARLY
NAME, ADDRESS, CITY, STATE AND ZIP CODE

NAME OF FIRM
ADDRESS
CITY, STATE AND ZIP CODE

SCALE:
PROJECT NO.
PROJECT NAME
ADDRESS
CITY, STATE AND ZIP CODE

DISPOSITION
[ ] APPROVED FOR RECORD

STATE OF NEW YORK
OFFICE OF THE STATE ARCHITECT

1. This plan was prepared by the architect...
2. This plan was prepared by the architect...
3. This plan was prepared by the architect...
4. This plan was prepared by the architect...
5. This plan was prepared by the architect...

**SCHEDULE 8.7**

**Maintenance Easement**

That certain parcel of land in the Fifth Ward to the City of Morgantown, Monongalia County, West Virginia, bounded by City of Morgantown Building Commission to the west and McCoy 6 Apartments, LLC to the east, and being a portion of the City of Morgantown Tax Map 20 Parcel 520, more particularly bounded and described as follows:

Beginning at an iron pin being a 5/8 inch iron rod set this survey in the southern right-of-way line of Falling Run Road (platted 30' RW); thence S. 42° 21' 14" E, 56.26 feet to a point; thence S. 69° 19' 11" W, 1.20 feet to a point; thence N. 81° 52' 01" W, 9.26 feet to a point; thence N. 61° 28' 04" W, 12.66 feet to a point; N. 41° 53' 05" W, 22.94 feet to a point; thence N. 03° 48' 08" W, 17.60 feet to the point of beginning containing 467 square feet (0.01 acre), more or less, and as shown as Parcel B on a Plat of Survey dated June 13, 2011, prepared by Alpha Associates, Incorporated, Morgantown, West Virginia, entitled Plat of Survey for WVU Board of Governors, Plat No. 3: Plat of Survey of Property to be Conveyed From McCoy 6 Apartments Limited Liability Company and Right of Way and Easement to be Conveyed From Morgantown Building Commission.

**EXHIBIT A**

**Form of Sale Order**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

|                          |   |                        |
|--------------------------|---|------------------------|
| <i>In re:</i>            | ) |                        |
|                          | ) |                        |
| AUGUSTA APARTMENTS, LLC, | ) | CASE NO. 1:10-bk-00303 |
|                          | ) |                        |
| Debtor.                  | ) | Chapter 11             |
|                          | ) |                        |
| McCOY 6, LLC,            | ) | CASE NO. 1:09-bk-00304 |
|                          | ) |                        |
| Debtor.                  | ) | Chapter 11             |

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**ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT TO  
11 U.S.C. § 363(b), (f), AND (m) AND § 105(a)**

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THIS MATTER is before the Court on the TRUSTEE’S MOTION FOR ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT TO 11 U.S.C. § 363(b), (f), AND (m) AND § 105(a) (the “Sale Motion”), filed by Robert L. Johns, Trustee (the “Trustee”) for the bankruptcy estate of Augusta Apartments, LLC (“Augusta”) and for the bankruptcy estate of McCoy 6, LLC (“McCoy 6”) (collectively, the “Debtors”) in the above captioned Chapter 11 cases, the Sale Motion, as approved by this Court, having been served on all parties in interest. The Court having considered the files and records herein and having heard statements of the parties and/or their counsel, and good cause appearing therefor,

**NOW, THEREFORE, THE COURT HEREBY FINDS,<sup>1</sup> THAT:**

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> In accordance with Bankruptcy Rule 7052, when appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

C. The statutory predicates for the relief sought in the Sale Motion and the basis for the approvals and authorizations herein are (i) Sections 105 and 363 of the Bankruptcy Code and (ii) Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) Rules 2002, 6004, 6006, 9007, and 9014.

D. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

E. Proper, timely, adequate and sufficient notice of the Sale Motion and the hearing on the Sale Motion (the “Sale Hearing”) have been provided in accordance with §§ 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008 and 9014; such notice was good and sufficient and appropriate under the particular circumstances; and no other or further notice of the Sale Motion, the hearing on the Sale Motion, or of the entry of this Order is necessary or shall be required.

F. A reasonable opportunity to object or be heard with respect to the Sale Motion and relief requested therein has been afforded to all parties-in-interest, and third parties have had a full, fair and reasonable opportunity to make a higher or otherwise better offer to purchase the assets that are the subject of the Sale Motion as follows and as more specifically defined in that certain Asset Purchase Agreement (the “Purchase Agreement”) entered into by the Trustee, on behalf of both Augusta and McCoy 6, and the West Virginia University Board of Governors, on Behalf of West Virginia University, a State Institution of Higher Education (“Purchaser”): (i) real property and improvements thereon consisting of a multi-story apartment complex with 158 units and a parking garage located at 49 Falling Run Road, Morgantown, West Virginia and otherwise known as “The Augusta on the Square” and five parcels of real property in the vicinity

of the apartment complex (collectively, the “Complex”); certain easements and rights of way; any and all tangible personal property and fixtures located on the Complex and used in connection with the Complex and its operation (e.g., furniture, signs, and gym equipment) (the “Personal Property”); various post-petition leases from the Debtors as lessor to various tenants as lessees of the residential units in the Augusta (the “Leases”); all permits, licenses, certificates and other authorizations relating to and necessary in connection with the Complex and its operation and any bonds associated therewith; and other assets associated with the Complex and its operation, all owned by Augusta, and (ii) the corrective transfers from McCoy 6 described in the Sale Motion, including the “McCoy 6 Transfers”, as defined in the Sale Motion (collectively hereinafter referred to as the “Purchased Assets”).<sup>2</sup>

G. The Trustee demonstrated a sufficient basis for and has reasonably exercised its sound business judgment in deciding to enter into the Purchase Agreement and to sell and transfer the Purchased Assets to the Purchaser. The relief requested in the Sale Motion is in the best interests of the Debtors’ estate, their creditors, and other parties in interest.

H. The Purchased Assets have been adequately and sufficiently marketed and other potential purchasers have had a full and fair opportunity to make an offer for the Purchased Assets.

I. The terms and conditions set forth in the Purchase Agreement, and the transaction contemplated thereby represent fair and reasonable terms and conditions, including the amount of the Purchase Price, and constitute the highest and best offer obtainable for the Purchased Assets, constitute the reasonably equivalent and fair market value for the Purchased Assets, and are otherwise fair and adequate under the facts and circumstances before this Court.

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<sup>2</sup> Notwithstanding other provisions of this Order, to the extent the description of the Purchased Assets set forth herein differs from that set forth in the Purchase Agreement, the terms of the Purchase Agreement shall govern.

J. The total consideration provided by the Purchaser for the Purchased Assets, Eleven Million Dollars (\$11,000,000.00) cash, payable by wire transfer at the closing of the Sale and subject to adjustments for costs to be paid for WVU's benefit by the Debtors and for prorations of various taxes, rental income, security deposits, utilities, and other income and other obligations (the "Purchase Price"), is the highest and best offer received by the Trustee, and the Purchase Price constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) under any other applicable laws of the United States, any state, territory or possession or the District of Columbia, reasonably equivalent value, fair consideration and fair value for the Purchased Assets. The recordation by the City of Morgantown ("City") of the Ordinance<sup>3</sup> and the enactment and recordation of the Supplemental Ordinance<sup>4</sup> constitute (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) under any other applicable laws of the United States, any state, territory or possession or the District of Columbia, reasonably equivalent value, fair consideration and fair value for the Easement<sup>5</sup> and the Option<sup>6</sup>.

K. The Purchaser and the City are purchasers in good faith, as that term is used in the Bankruptcy Code and court decisions thereunder, and are entitled to the protections of Section 363(m) of the Bankruptcy Code. The Purchase Agreement, together with the transfer of the Easement and the Option to the City, were negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind, and the sales process was

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<sup>3</sup> Defined in the Sale Motion.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

conducted in good faith. The Court has found that the Purchaser and the City have acted in good faith in all respects in connection with this case and the transactions under the Purchase Agreement, the Easement and the Option in that, among other things:

1. The Trustee conducted the sale process and negotiated with the Purchaser and the City ;
2. The Purchaser and the City recognized that the Trustee was free to negotiate with any other party that expressed qualified interest in purchasing the Purchased Assets; and
3. All payments to be made by the Purchaser and the City and other agreements or arrangements entered into by Purchaser and the City with the Trustee in connection with the Purchase Agreement have been disclosed.

L. In the absence of a stay pending appeal, the Purchaser and the City will be acting in good faith, pursuant to Section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the Purchase Agreement at any time on or after the entry of the Order.

M. Neither the Purchaser nor the City has violated Section 363(n) of the Bankruptcy Code by any action or inaction. The Purchase Price to be paid by Purchaser was not controlled by an agreement among potential purchasers at any sale or through any bidding or negotiating process. The transactions under the Purchase Agreement may not be avoided, and no damages may be assessed against the Purchaser or any other party under Section 363(n) of the Bankruptcy Code or any other applicable bankruptcy or non-bankruptcy law.

N. Except for any permitted encumbrances, obligations and liabilities specifically assumed in the Purchase Agreement (“Permitted Encumbrances”), neither the Purchaser nor the City would not have agreed to the sale expressed in the Purchase Agreement and would not

consummate the transactions contemplated thereby and under this Order if the sale of the Purchased Assets to the Purchaser or the assumption of the applicable Permitted Encumbrances were not free and clear of all Interests (as defined below) of any kind or nature whatsoever, except for the specifically assumed Permitted Encumbrances, or if the Purchaser or the City would, or in the future could, be liable for any of the Interests.

O. Except as may otherwise be provided in this Order, the Trustee may sell the Purchased Assets, the Easement and the Option free and clear of all Interests because, in each case, one or more of the standards set forth in Section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Interests and (ii) non-Debtor parties, who did not object, or who withdrew their objections, to the sale of the Purchased Assets, the Easement, the Option and the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. With respect to any and all entities with an Interest in or against the Purchased Assets, the Easement and the Option, either (i) applicable nonbankruptcy law permits the sale free and clear of such Interest, (ii) such Interest is in bona fide dispute, or (iii) such entity could be compelled to accept a money satisfaction of such Interest, so that the conditions of Section 363(f) of the Bankruptcy Code have been met, and such entities are adequately protected by having their Interests, if any, attach to the proceeds of the sale of the Purchased Assets.

P. The Interests could be discharged under Section 1141(c) of the Bankruptcy Code, so that the Purchased Assets, the Easement and the Option can be sold free and clear of those Interests under Section 105(a) of the Bankruptcy Code.

Q. The sale and transfer of the Purchased Assets, the Easement and the Option constitute transfers pursuant to Section 1146(a) of the Bankruptcy Code, which shall not be taxed under any law imposing a stamp tax or similar tax.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

**THAT:**

1. The Sale Motion is granted. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled are hereby overruled on the merits.

2. Notice of the Sale Hearing and Sale Motion was proper, timely, fair, and adequate under the circumstances and complied with the Bankruptcy Code and the Bankruptcy Rules.

**Approval of Sale**

3. The Trustee has established sound business justifications in support of the Sale. After considering the circumstances of this case, the Court determines that the Purchase Price presents the best opportunity for the Debtors' estate to realize the highest distribution possible to all creditors. The Purchase Price, as approved herein, is the highest and best offer for the Purchased Assets, the Easement and the Option. The Purchase Price constitutes full and adequate consideration and reasonably equivalent and fair market value for the Purchased Assets. The transfer of the Purchased Assets on the Closing to Purchaser for the Purchase Price is in the best interest of the Debtors' estate, their creditors and all parties-in-interest.

4. The Purchase Agreement is hereby approved in all respects and shall be deemed in full force and effect, binding and benefiting the Trustee, the Debtors and the Purchaser, and the transactions contemplated thereby by, and hereby are authorized and approved in all respects. The Purchase Agreement, the Easement and the Option and any documents executed in accordance with their terms shall not be subject to rejection.

5. Pursuant to the provisions of Sections 105 and 363 of the Bankruptcy Code, the Trustee is authorized, empowered and directed to implement and consummate all of the transactions (the "Sale") contemplated by the Purchase Agreement with the Purchaser and to sell

the Purchased Assets, the Easement and the Option, as described in the Purchase Agreement, to Purchaser for the Purchase Price.

6. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Trustee to sell and transfer the Purchased Assets, the Easement and the Option to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

7. Any amounts that become payable by the Debtors to the Purchaser pursuant to the Purchase Agreement (and related agreements executed in connection therewith) as of the date of the completion of the closing ("Closing") of the Sale ("Closing Date") shall constitute allowed administrative expenses of the Debtors' estate and shall be paid by the Debtors in the time and manner provided for in the Purchase Agreement.

8. The Trustee has carried the burden of demonstrating that the proposed sale will aid the Debtors' liquidation or reorganization, and the Trustee has met the established standards regarding sales outside the ordinary course of business pursuant to Section 363(b)(1) of the Bankruptcy Code.

9. The transactions contemplated in the Sale Motion, as approved and implemented herein, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including but not limited to Sections 363(b), (f) and (m).

10. For good and valid reasons, the Court may authorize and approve a sale of assets of the Debtors pursuant to Section 363(b) of the Bankruptcy Code without the necessity of following the procedures and making the findings required for confirmation of a plan of reorganization. Such relief is within the sound discretion of the Court in light of the existing

business exigencies of the Debtors' bankruptcy cases and is both justified and appropriate in light of the legitimate and compelling reasons stated in the Sale Motion.

11. The sale of the Purchased Assets to Purchaser does not constitute a *sub rosa* Chapter 11 Plan because the Sale does not propose to:

- (a) Impair or restructure existing debt or equity interests;
- (b) Impair or circumvent creditors' voting rights under any future Chapter 11

Plan; or

- (c) Circumvent Chapter 11 safeguards such as disclosure requirements; or

Classify claims, cure defaults, extend debt maturities or compromise claims or controversies.

#### **Good Faith**

12. The Purchaser and the City are third party purchasers unrelated to the Trustee or the Debtors, and the terms of Purchaser's purchase of the Purchased Assets as set forth in the Purchase Agreement are fair and reasonable under the circumstances of this case.

13. The transfer of the Purchased Assets to Purchaser represents an arms'-length transaction and has been negotiated in good faith between the parties. Purchaser and the City, as transferee of the Debtors' property, are good faith purchasers within the meaning of Section 363(m) of the Bankruptcy Code and, as such, are entitled to the full protections of Section 363(m) of the Bankruptcy Code. Purchaser and the City have proceeded in good faith in all respects in connection with this proceeding in that:

- (a) Both the Purchaser and the City recognized that that Trustee was free to deal with any other party interested in acquiring the Purchased Assets;

- (b) All payments to be made by Purchaser and the City in connection with the transaction have been disclosed; and

(c) Neither the Purchaser nor the City have violated Section 363(n) of the Bankruptcy Code by any action or inaction.

14. The Purchaser and the City are hereby granted and are entitled to all of the protections provided to a good faith buyer under Section 363(m) of the Bankruptcy Code, including that in the absence of a stay of this Sale Order, if Purchaser and the City elect to close under the Purchase Agreement at any time after entry of this Sale Order, then, Purchaser and the City shall be entitled to the protections of Section 363(m) of the Bankruptcy Code if this Sale Order or an authorization contained herein is reversed or modified on appeal.

**Free and Clear Sale**

15. Pursuant to Section 363(f) of the Bankruptcy Code and this Court's general equitable powers under Section 105(a) of the Bankruptcy Code, upon the Closing of the Sale, Purchaser and the City shall take title to and possession of the Purchased Assets, the Easement and the Option free and clear of the Interests, and neither Purchaser nor the City shall assume or be obligated to pay, perform or otherwise discharge and shall have liability or responsibility arising under or related to the Interests.

16. As set forth in the Purchase Agreement and Sale Motion, the "Interests" that the Purchased Assets are sold free and clear of, include, without limitation, recorded or unrecorded, asserted or unasserted, known or unknown as of the applicable Closing, now existing or hereafter arising, fixed or contingent, interests, liens, claims, encumbrances, pledges, mortgages, security interests, conditional sale or other retention agreements, obligations, guaranties, debts, rights, contractual commitments, judgments, demands, easements, charges, defects, options, rights of first refusal, and any other restrictions or interests of any kind or nature whether imposed by agreement, understanding, law, equity, or otherwise, including, without limitation:

(a) those liabilities specifically retained by the Debtors pursuant to Section 2.1 of the Purchase Agreement;

(b) obligations, debts, liabilities or claims incurred as a result of the use, status, operation, leasing, ownership or management of any of the Purchased Assets or the actions, omission, claims or choses in action of the Debtors or their predecessors prior to the Closing, or any accident, injury or death occurring prior to the Closing;

(c) any and all obligations and/or liabilities to the extent attributable to defaults, conditions, status, events, actions or omissions or accidents, claims, injuries, deaths or other damages occurring prior to the Closing;

(d) any fines, assessments or penalties assessed against or payable by the Debtors for violations that occurred prior to the Closing Date;

(e) any mortgages, unrecorded claims in or against real estate, security interests, options (other than the Option in favor of the City on the McCoy 6 transfer), liens or encumbrances of any kind, including any administrative expenses or priority claim asserted herein and any interest of a party to a title retention arrangement intended as security;

(f) any demands or claims of creditors of, or claims against, the Debtors;

(g) any interests of shareholders or other interests in the Debtors;

(h) claims of lessees under leases with the Debtors (except claims arising from and after the Closing under the Leases), whether entered into before or after the date of the respective Debtors' bankruptcy petitions;

(i) any person claiming through, by or on behalf of the Debtors, whether such claim, demand, lien or interest be direct or indirect, known or unknown, or claiming that the Purchaser is a successor or successor-in-interest or pursuant to any other theory, including

without limitation any and all obligations, liabilities, conditions, covenants, requirements or responsibilities under: (i) any agreement, indenture, or other contract with the City of Morgantown, The Morgantown Building Commission, the West Virginia Economic Development Authority or any other governmental agency or authority, or with a lender, creditor or any other entity or individual; (ii) The Square At Falling Run Planned Unit Development and/or the Outline Plan for The Square At Falling Run Planned Unit Development; or (iii) any other agreement, indenture, or similar contract pertaining to The Augusta on the Square, the Augusta, and/or The Square At Falling Run; (iv) any employment or labor agreements; (v) any and all obligations and/or liabilities arising out of or incurred with respect to any of the Debtors' employees, former employees, agents or consultants, employment contracts, compensation agreements, employee benefit plans, or any other obligations (including but not limited to unemployment, disability, severance, pension, health, medical, life, dental, or workers' compensation or disease obligations) owed to or covering any employee, former employee, agent or consultant of the Debtors or their predecessors; (vi) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claims, including, without limitation, claims that might otherwise arise under or pursuant to (A) the Employee Retirement Income Security Act of 1974, as amended, (B) the Fair Labor Standards Act, (C) Title VII of the Civil Rights Act of 1964, (D) the Federal Rehabilitation Act of 1973, (E) the National Labor Relations Act, (F) the Worker Adjustment and Retraining Act, (G) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act of 1967, as amended, (H) the Americans with Disabilities Act of 1990, (I) the Consolidated Omnibus Budget Reconciliation Act of 1985, (J) the Jones Act, (K) the Longshoremen's and Harbor Workers' Compensation Act, (L) state discrimination laws, (M) state unemployment

compensation laws or any other similar state laws, or (N) any other state or federal benefits or claims relating to any employment with the Debtors or any predecessors; (vii) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims; (viii) environmental or other claims or liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste located on or below the surface of the real property portion of the Purchased Assets) that may be asserted on any basis, including, without limitation, under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., Federal Water Pollution Prevention and Control Act, supra, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., and in the regulations adopted and publications promulgated pursuant thereto, or in any other federal, state or local environmental law, ordinance, rule or regulation; (ix) any bulk sales or similar law; (x) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (xi) successor or vicarious liabilities of any kind or character;

(j) any theory of antitrust, labor law, de facto merger or substantial continuity; and

(k) liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the applicable Purchased Assets prior to the applicable Closing; and

(l) claims against any of its Debtors' predecessors or affiliates.

Provided however, neither Purchaser nor the City shall be relieved of liability with respect to obligations accruing from and after the Closing or for the Permitted Encumbrances.

17. Except for the applicable Permitted Encumbrances or as otherwise expressly provided for in this Order or the Purchase Agreement, neither the Purchaser nor the City shall have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets. Purchaser and the City have given substantial consideration under the Purchase Agreement for the benefit of the holders of Interests, and absent the provisions of this Order providing for a sale free and clear of Interests, Purchaser would not have purchased the Purchased Assets, the Easement or the Option. The consideration given by Purchaser and the City shall constitute valid and valuable consideration for the releases of the Interests, which releases shall be deemed to have been given in favor of Purchaser by all holders of Interests against the Debtors or the applicable Purchased Assets, the Easement and the Option.

18. Effective on the Closing Date, all persons and entities, to the extent allowed by law, are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser or the City, their successors and assigns, or the Purchased Assets, based upon or with respect to an Interest of which the sale of the Purchased Assets, the Easement and the Option are free and clear under the terms of this Order, including, without limitation, the following actions:

(a) Commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors, assets or properties;

(b) Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser or the City, their successors, assets or properties;

(c) Creating, perfecting or enforcing any lien or other encumbrance against the Purchaser or the City, their successors, assets or properties;

(d) Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or the City or their successors;

(e) Commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the Purchase Agreement or actions contemplated or taken in respect thereof; or

(f) Revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

19. Neither Purchaser nor the City constitutes a successor to the Debtors by reason of any theory of law or equity because:

(a) Except as otherwise set forth in the Purchase Agreement, neither Purchaser nor the City is expressly or impliedly agreeing to assume any of the Debtors' liabilities or debts;

(b) The transaction contemplated by the Purchase Agreement does not amount to a consolidation, merger or de facto merger of Debtors and Purchaser;

(c) Purchaser is not merely a continuation of the Debtors; and

(d) The transaction contemplated by the Purchase Agreement is not being entered into fraudulently or in order to escape liability from the Debtors' debts.

### Transfer of Purchased Assets

20. Subject to the fulfillment of the terms and conditions of the Purchase Agreement, at the Closing, the Trustee will sell, transfer, assign and convey to (i) the Purchaser and/or its assigns all of the Debtors' rights, title and interest in, to and under the Purchased Assets, and (ii) the City and/or its assigns all of the Debtors' rights, title and interest in, to and under the Easement and the Option.

21. The Trustee is authorized, empowered and hereby directed to fully perform under, consummate and implement the terms of the Purchase Agreement together with any and all additional acts, instruments, and documents that may be reasonably necessary or desirable to implement and carry out the terms and intent of the Purchase Agreement, this Sale Order, and the sale of the Purchased Assets, the Easement and the Option contemplated thereby and to take all further actions as may reasonably be requested by the Purchaser and the City in order to consummate, evidence, or confirm the provisions contained in such documents or for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser and the City, as the case may be, or reducing to possession in the Purchaser, any or all of the Purchased Assets, the Easement and the Option without any further corporate action or orders of this Court, including without limitation delivery of special warranty deeds, bills of sale, assignments, and other such documentation to evidence the transfers required herein.

22. The Purchaser shall have no obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to its obligations to do so have been met, satisfied, or waived.

23. The Purchaser and the City may consummate the transactions under the Purchase Agreement at any time after the entry of this Order (including immediately thereafter) by waiving all closing conditions set forth in the Purchase Agreement that have not been satisfied

and by proceeding to close such transactions, without any notice to the Court, any pre-petition or post-petition creditor of the Debtors, or any other party in interest.

24. Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the relevant Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are directed to be transferred to Purchaser as of the Closing Date, except to the extent otherwise provided in the Purchase Agreement. Without limitation of the foregoing, the Trustee shall cooperate in the transfer of such permits, licenses, registrations, approvals, and authorizations to the Purchaser.

25. After the Closing, the balance of the Purchase Price paid to the Trustee shall be disbursed by the Trustee as follows:

- (a) Payment of all normal and ordinary settlement charges;
- (b) Payment of the Debtors' share of the real estate taxes;
- (c) Payment of Trustee's costs of the sale;
- (d) Payment of \$1,247.00 plus 10% interest from August 24, 2005 to the State of West Virginia to satisfy two judgments against George Harold Berthy, Jr. (Case Nos. 04M-7313 and 04M7314);
- (e) Payment to First United Bank and Trust in the amount of \$50,000 in full and complete satisfaction of (i) its disputed first priority lien on a tiny portion (530 square feet) of the Augusta real property assets valued at \$10,000, and (ii) its first priority lien on the McCoy 6 Transfers valued at \$40,000;
- (f) Payment into the Trustee's escrow account of \$2,000,000 to be held pending the resolution of the priority of mechanic's lien in favor of Landau Building Company

("Landau") and Laurita Excavating, Inc. ("Laurita") as determined by the Circuit Court of Monongalia County, West Virginia, Division II, in the civil proceeding styled *Landau Building Company v. Augusta Apartments, LLC, et al.*, Case No. 08-C-219, which decision and the priority of which lien is the subject of a pending appeal by PNC Bank, National Association, successor to National City Bank ("PNC"). The escrow account funds shall only be released by the Trustee in accordance with the Bankruptcy Court's further order which will be consistent with the final non-appealable resolution of the pending litigation as to the amount and priority of the mechanic's liens, provided that all funds in the escrow account not paid to mechanic's lien claimants shall be paid to PNC.

(g) Payment of the balance of the Purchase Price (after the payments provided for in Paragraphs 25(a)-(e) above) to PNC in full and complete satisfaction of its outstanding first priority liens on the Purchased Assets.

26. At the Closing, the Trustee is ordered to pay the Trustee's statutory commission on the Sale in the amount of \$353,250.00 from Augusta's operating account.

27. The Trustee is authorized to cooperate with Purchaser and the City in order for Purchaser to obtain quiet enjoyment of the Purchased Assets, the Easement and the Option including putting Purchaser into full possession of the Purchased Assets. Except as otherwise expressly provided in this Order, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

28. Effective as of the Closing, the Purchaser, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of

substitution, in the Debtors' name and stead, on behalf and for the benefit of the Purchaser, its successors and assigns, to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Purchaser, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Purchaser, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and to do all acts and things with respect to the Purchased Assets which the Purchaser, its successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Trustee.

29. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Interests shall be self-executing, and neither the Trustee nor the Purchaser or the City shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order. Without limitation of the foregoing, a certified copy of this Order may be filed with the appropriate Clerk and/or recorded with the appropriate Recorder to act to cancel any Interests of record, except the Permitted Encumbrances. The filing or recording of this Order shall provide full notice of the contents of the Order. In addition, on or before the Closing Date, all parties holding Interests of any kind are authorized and directed to execute such documents and to take all other actions as may be necessary to document the release of any Interests of any kind against the Purchased Assets, the Easement and the Option. If any person or entity that has filed financing statements or other documents or agreements evidencing any Interests in or against the Purchased Assets shall not have delivered to the Purchaser, within a reasonable time after request therefore, termination statements, instruments of satisfaction, or releases of all such Interests

with respect to the Purchased Assets, the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets, the Easement and the Option.

30. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets, the Easement and the Option acquired by the Purchaser under the Purchase Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

31. Except as expressly provided in this Order, neither the Purchaser nor the City is assuming nor shall they nor any affiliate or subsidiary of them be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the transactions contemplated by the Purchase Agreement, or any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Purchase Agreement, which liabilities, debts, and obligations are interests and are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any affiliate or subsidiary of the Purchaser.

#### **Additional Provisions**

32. This Order is and shall be binding upon and govern the acts of all entities to the extent allowed by law, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or

contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

33. The Purchaser has not assumed and is otherwise not obligated for any of the Debtors' liabilities other than as provided in this Order.

34. Pursuant to Section 1146(a) of the Bankruptcy Code, the transfer of the Purchased Assets, and the execution and delivery of any instrument of transfer by the Debtors pursuant to the Purchase Agreement or this Order shall not be taxed under any law imposing a real estate tax, transfer tax, recording tax, sales tax, a stamp tax, or a similar tax.

35. The automatic stay provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Purchase Agreement and the provisions of this Order.

36. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estate.

37. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the Purchase Agreement.

38. There were no brokers involved with the negotiation or consummation of the Purchase Agreement, and, therefore, neither the Trustee, Debtors, the Purchaser nor the City shall be liable for any brokers' commissions.

39. Notwithstanding Bankruptcy Rules 6004, 6006 and 7062, this Order shall not be stayed and shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser and the City are free to close under the Purchase Agreement at any time, including immediately upon entry of this Order, subject to the terms of the Purchase Agreement. If, in the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser and the City close under the Purchase Agreement, the Purchaser and the City shall be deemed to be acting in “good faith” and shall be entitled to the protections of § 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Purchase Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

40. To the extent any provisions of this Order conflict with the terms and conditions of the Purchase Agreement, the terms and conditions of this Order shall govern and control.

41. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

42. This Court shall retain jurisdiction even after the closing of this case to:

(a) Interpret, implement and enforce the terms of this Order and the Purchase Agreement, all amendments thereto and any waivers or consents thereunder and each of the agreements executed in connection therewith in all respects;

(b) Decide any disputes concerning this Order, the Purchase Agreement or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets, the

Easement and the Option and all issues and disputes arising in connection with the relief authorized herein;

(c) Protect the Purchaser, the City, the Purchased Assets, the Easement and the Option against any of the Interests as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability;

(d) Enter orders in aid or furtherance of (i) the transfer of possession and control from the Trustee to the Purchaser and (ii) the transactions contemplated by the Purchase Agreement or to ensure the peaceful use and enjoyment of the Purchased Assets by the Purchaser;

(e) Compel delivery of all Purchased Assets to the Purchaser;

(f) Adjudicate any and all disputes concerning alleged Interests in and to the Purchased Assets, the Easement and the Option, including the extent, validity, enforceability, priority, and nature of any such alleged Interests; and

(g) Adjudicate any and all disputes relating to the right, title or interest of the Debtors or the Estate in the Purchased Assets, the Easement and the Option and the proceeds thereof.

43. The Clerk is directed to transmit copies of this Order to the parties in interest.

Submitted by:

/s/ Robert L. Johns

Wendel B. Turner [WV S.B. # 3823]

Robert L. Johns [WV S.B. # 5161]

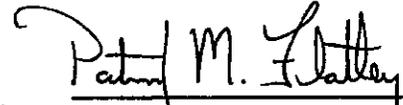
TURNER & JOHNS, PLLC

216 Brooks Street, Suite 200

Charleston, WV 25301

*Counsel for the Trustee*

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST

  
Patrick M. Flatley  
United States Bankruptcy Judge  
Dated: Thursday, July 28, 2011 9:53:39 AM

*In re:* )  
 )  
AUGUSTA APARTMENTS, LLC, ) CASE NO. 1:10-bk-00303  
 )  
Debtor. ) Chapter 11  
 )  
McCoy 6, LLC, ) CASE NO. 1:09-bk-00304  
 )  
Debtor. ) Chapter 11

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**ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT TO  
11 U.S.C. § 363(b), (f), AND (m) AND § 105(a)**

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THIS MATTER is before the Court on the TRUSTEE'S MOTION FOR ORDER AUTHORIZING THE SALE OF ASSETS PURSUANT TO 11 U.S.C. § 363(b), (f), AND (m) AND § 105(a) (the "Sale Motion"), filed by Robert L. Johns, Trustee (the "Trustee") for the bankruptcy estate of Augusta Apartments, LLC ("Augusta") and for the bankruptcy estate of McCoy 6, LLC ("McCoy 6") (collectively, the "Debtors") in the above captioned Chapter 11 cases, the Sale Motion, as approved by this Court, having been served on all parties in interest. The Court having considered the files and records herein and having heard statements of the parties and/or their counsel, and good cause appearing therefor,

**NOW, THEREFORE, THE COURT HEREBY FINDS,<sup>1</sup> THAT:**

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> In accordance with Bankruptcy Rule 7052, when appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

C. The statutory predicates for the relief sought in the Sale Motion and the basis for the approvals and authorizations herein are (i) Sections 105 and 363 of the Bankruptcy Code and (ii) Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) Rules 2002, 6004, 6006, 9007, and 9014.

D. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

E. Proper, timely, adequate and sufficient notice of the Sale Motion and the hearing on the Sale Motion (the “Sale Hearing”) have been provided in accordance with §§ 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008 and 9014; such notice was good and sufficient and appropriate under the particular circumstances; and no other or further notice of the Sale Motion, the hearing on the Sale Motion, or of the entry of this Order is necessary or shall be required.

F. A reasonable opportunity to object or be heard with respect to the Sale Motion and relief requested therein has been afforded to all parties-in-interest, and third parties have had a full, fair and reasonable opportunity to make a higher or otherwise better offer to purchase the assets that are the subject of the Sale Motion as follows and as more specifically defined in that certain Asset Purchase Agreement (the “Purchase Agreement”) entered into by the Trustee, on behalf of both Augusta and McCoy 6, and the West Virginia University Board of Governors, on Behalf of West Virginia University, a State Institution of Higher Education (“Purchaser”): (i) real property and improvements thereon consisting of a multi-story apartment complex with 158 units and a parking garage located at 49 Falling Run Road, Morgantown, West Virginia and otherwise known as “The Augusta on the Square” and five parcels of real property in the vicinity

of the apartment complex (collectively, the “Complex”); certain easements and rights of way; any and all tangible personal property and fixtures located on the Complex and used in connection with the Complex and its operation (*e.g.*, furniture, signs, and gym equipment) (the “Personal Property”); various post-petition leases from the Debtors as lessor to various tenants as lessees of the residential units in the Augusta (the “Leases”); all permits, licenses, certificates and other authorizations relating to and necessary in connection with the Complex and its operation and any bonds associated therewith; and other assets associated with the Complex and its operation, all owned by Augusta, and (ii) the corrective transfers from McCoy 6 described in the Sale Motion, including the “McCoy 6 Transfers”, as defined in the Sale Motion (collectively hereinafter referred to as the “Purchased Assets”).<sup>2</sup>

G. The Trustee demonstrated a sufficient basis for and has reasonably exercised its sound business judgment in deciding to enter into the Purchase Agreement and to sell and transfer the Purchased Assets to the Purchaser. The relief requested in the Sale Motion is in the best interests of the Debtors’ estate, their creditors, and other parties in interest.

H. The Purchased Assets have been adequately and sufficiently marketed and other potential purchasers have had a full and fair opportunity to make an offer for the Purchased Assets.

I. At the Sale Hearing held on July 21, 2011, the Trustee conducted an auction between an upset bidder, Fountain Residential Partners, LLC, and Purchaser, which resulted in an increase of the purchase price for the Purchased Assets from \$11,000,000 to \$13,100,000. Purchaser was the high bidder at \$13,100,000.

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<sup>2</sup> Notwithstanding other provisions of this Order, to the extent the description of the Purchased Assets set forth herein differs from that set forth in the Purchase Agreement, the terms of the Purchase Agreement shall govern.

J. The terms and conditions set forth in the Purchase Agreement, and the transaction contemplated thereby represent fair and reasonable terms and conditions, including the amount of the Purchase Price, and constitute the highest and best offer obtainable for the Purchased Assets, constitute the reasonably equivalent and fair market value for the Purchased Assets, and are otherwise fair and adequate under the facts and circumstances before this Court.

K. The total consideration provided by the Purchaser for the Purchased Assets, Thirteen Million One Hundred Thousand Dollars (\$13,100,000.00) cash, payable by wire transfer at the closing of the Sale and subject to adjustments for costs to be paid for WVU's benefit by the Debtors and for prorations of various taxes, rental income, security deposits, utilities, and other income and other obligations (the "Purchase Price"), is the highest and best offer received by the Trustee, and the Purchase Price constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) under any other applicable laws of the United States, any state, territory or possession or the District of Columbia, reasonably equivalent value, fair consideration and fair value for the Purchased Assets. The recordation by the City of Morgantown ("City") of the Ordinance<sup>3</sup> and the enactment and recordation of the Supplemental Ordinance<sup>4</sup> constitute (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) under any other applicable laws of the United States, any state, territory or possession or the District of Columbia, reasonably equivalent value, fair consideration and fair value for the Easement<sup>5</sup> and the Option<sup>6</sup>.

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<sup>3</sup> Defined in the Sale Motion.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

L. The Purchaser and the City are purchasers in good faith, as that term is used in the Bankruptcy Code and court decisions thereunder, and are entitled to the protections of Section 363(m) of the Bankruptcy Code. The Purchase Agreement, together with the transfer of the Easement and the Option to the City, were negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind, and the sales process was conducted in good faith. The Court has found that the Purchaser and the City have acted in good faith in all respects in connection with this case and the transactions under the Purchase Agreement, the Easement and the Option in that, among other things:

1. The Trustee conducted the sale process and negotiated with the Purchaser and the City ;
2. The Purchaser and the City recognized that the Trustee was free to negotiate with any other party that expressed qualified interest in purchasing the Purchased Assets; and
3. All payments to be made by the Purchaser and the City and other agreements or arrangements entered into by Purchaser and the City with the Trustee in connection with the Purchase Agreement have been disclosed.
4. An auction was conducted by the Trustee which increased the purchase price payable by Purchaser from \$11,000,000 to \$13,100,000.

M. In the absence of a stay pending appeal, the Purchaser and the City will be acting in good faith, pursuant to Section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the Purchase Agreement at any time on or after the entry of the Order.

N. Neither the Purchaser nor the City has violated Section 363(n) of the Bankruptcy Code by any action or inaction. The Purchase Price to be paid by Purchaser was not controlled

by an agreement among potential purchasers at any sale or through any bidding or negotiating process. The transactions under the Purchase Agreement may not be avoided, and no damages may be assessed against the Purchaser or any other party under Section 363(n) of the Bankruptcy Code or any other applicable bankruptcy or non-bankruptcy law.

O. Except for any permitted encumbrances, obligations and liabilities specifically assumed in the Purchase Agreement (“Permitted Encumbrances”), neither the Purchaser nor the City would not have agreed to the sale expressed in the Purchase Agreement and would not consummate the transactions contemplated thereby and under this Order if the sale of the Purchased Assets to the Purchaser or the assumption of the applicable Permitted Encumbrances were not free and clear of all Interests (as defined below) of any kind or nature whatsoever, except for the specifically assumed Permitted Encumbrances, or if the Purchaser or the City would, or in the future could, be liable for any of the Interests.

P. Except as may otherwise be provided in this Order, the Trustee may sell the Purchased Assets, the Easement and the Option free and clear of all Interests because, in each case, one or more of the standards set forth in Section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Interests and (ii) non-Debtor parties, who did not object, or who withdrew their objections, to the sale of the Purchased Assets, the Easement, the Option and the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. With respect to any and all entities with an Interest in or against the Purchased Assets, the Easement and the Option, either (i) applicable nonbankruptcy law permits the sale free and clear of such Interest, (ii) such Interest is in bona fide dispute, or (iii) such entity could be compelled to accept a money satisfaction of such Interest, so that the conditions of Section 363(f) of the Bankruptcy Code have been met, and such entities are adequately protected by having their

Interests, if any, attach to the proceeds of the sale of the Purchased Assets.

Q. The Interests could be discharged under Section 1141(c) of the Bankruptcy Code, so that the Purchased Assets, the Easement and the Option can be sold free and clear of those Interests under Section 105(a) of the Bankruptcy Code.

R. The sale and transfer of the Purchased Assets, the Easement and the Option constitute transfers pursuant to Section 1146(a) of the Bankruptcy Code, which shall not be taxed under any law imposing a stamp tax or similar tax.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Sale Motion is granted. All objections to the Sale Motion or the relief requested therein have been withdrawn, except the objections of the Warners, which are hereby overruled on the merits for the reasons stated by the Court on the record at the Sale Hearing.

2. Notice of the Sale Hearing and Sale Motion was proper, timely, fair, and adequate under the circumstances and complied with the Bankruptcy Code and the Bankruptcy Rules.

**Approval of Sale**

3. The Trustee has established sound business justifications in support of the Sale. After considering the circumstances of this case, the Court determines that the Purchase Price presents the best opportunity for the Debtors' estate to realize the highest distribution possible to all creditors. The Purchase Price, as approved herein, is the highest and best offer for the Purchased Assets, the Easement and the Option. The Purchase Price constitutes full and adequate consideration and reasonably equivalent and fair market value for the Purchased Assets. The transfer of the Purchased Assets on the Closing to Purchaser for the Purchase Price is in the best interest of the Debtors' estate, their creditors and all parties-in-interest.

4. The Purchase Agreement is hereby approved in all respects and shall be deemed in full force and effect, binding and benefiting the Trustee, the Debtors and the Purchaser, and the transactions contemplated thereby by, and hereby are authorized and approved in all respects. The Purchase Agreement, the Easement and the Option and any documents executed in accordance with their terms shall not be subject to rejection.

5. Pursuant to the provisions of Sections 105 and 363 of the Bankruptcy Code, the Trustee is authorized, empowered and directed to implement and consummate all of the transactions (the "Sale") contemplated by the Purchase Agreement with the Purchaser and to sell the Purchased Assets, the Easement and the Option, as described in the Purchase Agreement, to Purchaser for the Purchase Price.

6. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Trustee to sell and transfer the Purchased Assets, the Easement and the Option to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

7. Any amounts that become payable by the Debtors to the Purchaser pursuant to the Purchase Agreement (and related agreements executed in connection therewith) as of the date of the completion of the closing ("Closing") of the Sale ("Closing Date") shall constitute allowed administrative expenses of the Debtors' estate and shall be paid by the Debtors in the time and manner provided for in the Purchase Agreement.

8. The Trustee has carried the burden of demonstrating that the proposed sale will aid the Debtors' liquidation or reorganization, and the Trustee has met the established standards regarding sales outside the ordinary course of business pursuant to Section 363(b)(1) of the Bankruptcy Code.

9. The transactions contemplated in the Sale Motion, as approved and implemented herein, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including but not limited to Sections 363(b), (f) and (m).

10. For good and valid reasons, the Court may authorize and approve a sale of assets of the Debtors pursuant to Section 363(b) of the Bankruptcy Code without the necessity of following the procedures and making the findings required for confirmation of a plan of reorganization. Such relief is within the sound discretion of the Court in light of the existing business exigencies of the Debtors' bankruptcy cases and is both justified and appropriate in light of the legitimate and compelling reasons stated in the Sale Motion.

11. The sale of the Purchased Assets to Purchaser does not constitute a *sub rosa* Chapter 11 Plan because the Sale does not propose to:

- (a) Impair or restructure existing debt or equity interests;
- (b) Impair or circumvent creditors' voting rights under any future Chapter 11

Plan; or

- (c) Circumvent Chapter 11 safeguards such as disclosure requirements; or

Classify claims, cure defaults, extend debt maturities or compromise claims or controversies.

**Good Faith**

12. The Purchaser and the City are third party purchasers unrelated to the Trustee or the Debtors, and the terms of Purchaser's purchase of the Purchased Assets as set forth in the Purchase Agreement are fair and reasonable under the circumstances of this case.

13. The transfer of the Purchased Assets to Purchaser represents an arms'-length transaction and has been negotiated in good faith between the parties. Purchaser and the City, as transferee of the Debtors' property, are good faith purchasers within the meaning of Section 363(m) of the Bankruptcy Code and, as such, are entitled to the full protections of Section

363(m) of the Bankruptcy Code. Purchaser and the City have proceeded in good faith in all respects in connection with this proceeding in that:

(a) Both the Purchaser and the City recognized that that Trustee was free to deal with any other party interested in acquiring the Purchased Assets and, in fact, the Trustee conducted an auction that resulted in an increased purchase price payable by Purchaser;

(b) All payments to be made by Purchaser and the City in connection with the transaction have been disclosed; and

(c) Neither the Purchaser nor the City have violated Section 363(n) of the Bankruptcy Code by any action or inaction.

14. The Purchaser and the City are hereby granted and are entitled to all of the protections provided to a good faith buyer under Section 363(m) of the Bankruptcy Code, including that in the absence of a stay of this Sale Order, if Purchaser and the City elect to close under the Purchase Agreement at any time after entry of this Sale Order, then, Purchaser and the City shall be entitled to the protections of Section 363(m) of the Bankruptcy Code if this Sale Order or an authorization contained herein is reversed or modified on appeal.

**Free and Clear Sale**

15. Pursuant to Section 363(f) of the Bankruptcy Code and this Court's general equitable powers under Section 105(a) of the Bankruptcy Code, upon the Closing of the Sale, Purchaser and the City shall take title to and possession of the Purchased Assets, the Easement and the Option free and clear of the Interests, and neither Purchaser nor the City shall assume or be obligated to pay, perform or otherwise discharge and shall have liability or responsibility arising under or related to the Interests.

16. As set forth in the Purchase Agreement and Sale Motion, the "Interests" that the Purchased Assets are sold free and clear of, include, without limitation, recorded or unrecorded,

asserted or unasserted, known or unknown as of the applicable Closing, now existing or hereafter arising, fixed or contingent, interests, liens, claims, encumbrances, pledges, mortgages, security interests, conditional sale or other retention agreements, obligations, guaranties, debts, rights, contractual commitments, judgments, demands, easements, charges, defects, options, rights of first refusal, and any other restrictions or interests of any kind or nature whether imposed by agreement, understanding, law, equity, or otherwise, including, without limitation:

(a) those liabilities specifically retained by the Debtors pursuant to Section 2.1 of the Purchase Agreement;

(b) obligations, debts, liabilities or claims incurred as a result of the use, status, operation, leasing, ownership or management of any of the Purchased Assets or the actions, omission, claims or choses in action of the Debtors or their predecessors prior to the Closing, or any accident, injury or death occurring prior to the Closing;

(c) any and all obligations and/or liabilities to the extent attributable to defaults, conditions, status, events, actions or omissions or accidents, claims, injuries, deaths or other damages occurring prior to the Closing;

(d) any fines, assessments or penalties assessed against or payable by the Debtors for violations that occurred prior to the Closing Date;

(e) any mortgages, unrecorded claims in or against real estate, security interests, options (other than the Option in favor of the City on the McCoy 6 transfer), liens or encumbrances of any kind, including any administrative expenses or priority claim asserted herein and any interest of a party to a title retention arrangement intended as security;

(f) any demands or claims of creditors of, or claims against, the Debtors;

(g) any interests of shareholders or other interests in the Debtors;

(h) claims of lessees under leases with the Debtors (except claims arising from and after the Closing under the Leases), whether entered into before or after the date of the respective Debtors' bankruptcy petitions;

(i) any person claiming through, by or on behalf of the Debtors, whether such claim, demand, lien or interest be direct or indirect, known or unknown, or claiming that the Purchaser is a successor or successor-in-interest or pursuant to any other theory, including without limitation any and all obligations, liabilities, conditions, covenants, requirements or responsibilities under: (i) any agreement, indenture, or other contract with the City of Morgantown, The Morgantown Building Commission, the West Virginia Economic Development Authority or any other governmental agency or authority, or with a lender, creditor or any other entity or individual; (ii) The Square At Falling Run Planned Unit Development and/or the Outline Plan for The Square At Falling Run Planned Unit Development; or (iii) any other agreement, indenture, or similar contract pertaining to The Augusta on the Square, the Augusta, and/or The Square At Falling Run; (iv) any employment or labor agreements; (v) any and all obligations and/or liabilities arising out of or incurred with respect to any of the Debtors' employees, former employees, agents or consultants, employment contracts, compensation agreements, employee benefit plans, or any other obligations (including but not limited to unemployment, disability, severance, pension, health, medical, life, dental, or workers' compensation or disease obligations) owed to or covering any employee, former employee, agent or consultant of the Debtors or their predecessors; (vi) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claims, including, without limitation, claims that might otherwise arise under or pursuant to (A) the Employee Retirement Income Security Act of 1974, as amended, (B) the Fair Labor Standards

Act, (C) Title VII of the Civil Rights Act of 1964, (D) the Federal Rehabilitation Act of 1973, (E) the National Labor Relations Act, (F) the Worker Adjustment and Retraining Act, (G) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act of 1967, as amended, (H) the Americans with Disabilities Act of 1990, (I) the Consolidated Omnibus Budget Reconciliation Act of 1985, (J) the Jones Act, (K) the Longshoremen's and Harbor Workers' Compensation Act, (L) state discrimination laws, (M) state unemployment compensation laws or any other similar state laws, or (N) any other state or federal benefits or claims relating to any employment with the Debtors or any predecessors; (vii) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims; (viii) environmental or other claims or liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste located on or below the surface of the real property portion of the Purchased Assets) that may be asserted on any basis, including, without limitation, under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., Federal Water Pollution Prevention and Control Act, supra, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., and in the regulations adopted and publications promulgated pursuant thereto, or in any other federal, state or local environmental law, ordinance, rule or regulation; (ix) any bulk sales or similar law; (x) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (xi) successor or vicarious liabilities of any kind or character;

(j) any theory of antitrust, labor law, de facto merger or substantial continuity; and

(k) liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the applicable Purchased Assets prior to the applicable Closing; and

(l) claims against any of its Debtors' predecessors or affiliates.

Provided however, neither Purchaser nor the City shall be relieved of liability with respect to obligations accruing from and after the Closing or for the Permitted Encumbrances.

17. Except for the applicable Permitted Encumbrances or as otherwise expressly provided for in this Order or the Purchase Agreement, neither the Purchaser nor the City shall have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Purchased Assets. Purchaser and the City have given substantial consideration under the Purchase Agreement for the benefit of the holders of Interests, and absent the provisions of this Order providing for a sale free and clear of Interests, Purchaser would not have purchased the Purchased Assets, the Easement or the Option. The consideration given by Purchaser and the City shall constitute valid and valuable consideration for the releases of the Interests, which releases shall be deemed to have been given in favor of Purchaser by all holders of Interests against the Debtors or the applicable Purchased Assets, the Easement and the Option.

18. Effective on the Closing Date, all persons and entities, to the extent allowed by law, are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser or the City, their successors and assigns, or the Purchased

Assets, based upon or with respect to an Interest of which the sale of the Purchased Assets, the Easement and the Option are free and clear under the terms of this Order, including, without limitation, the following actions:

(a) Commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors, assets or properties;

(b) Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser or the City, their successors, assets or properties;

(c) Creating, perfecting or enforcing any lien or other encumbrance against the Purchaser or the City, their successors, assets or properties;

(d) Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or the City or their successors;

(e) Commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the Purchase Agreement or actions contemplated or taken in respect thereof; or

(f) Revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

19. Neither Purchaser nor the City constitutes a successor to the Debtors by reason of any theory of law or equity because:

(a) Except as otherwise set forth in the Purchase Agreement, neither Purchaser nor the City is expressly or impliedly agreeing to assume any of the Debtors' liabilities or debts;

(b) The transaction contemplated by the Purchase Agreement does not amount to a consolidation, merger or de facto merger of Debtors and Purchaser;

(c) Purchaser is not merely a continuation of the Debtors; and

(d) The transaction contemplated by the Purchase Agreement is not being entered into fraudulently or in order to escape liability from the Debtors' debts.

#### **Transfer of Purchased Assets**

20. Subject to the fulfillment of the terms and conditions of the Purchase Agreement, at the Closing, the Trustee will sell, transfer, assign and convey to (i) the Purchaser and/or its assigns all of the Debtors' rights, title and interest in, to and under the Purchased Assets, and (ii) the City and/or its assigns all of the Debtors' rights, title and interest in, to and under the Easement and the Option.

21. The Trustee is authorized, empowered and hereby directed to fully perform under, consummate and implement the terms of the Purchase Agreement together with any and all additional acts, instruments, and documents that may be reasonably necessary or desirable to implement and carry out the terms and intent of the Purchase Agreement, this Sale Order, and the sale of the Purchased Assets, the Easement and the Option contemplated thereby and to take all further actions as may reasonably be requested by the Purchaser and the City in order to consummate, evidence, or confirm the provisions contained in such documents or for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser and the City, as the case may be, or reducing to possession in the Purchaser, any or all of the Purchased Assets, the Easement and the Option without any further corporate action or orders of this Court, including without limitation delivery of special warranty deeds, bills of sale, assignments, and other such documentation to evidence the transfers required herein.

22. The Purchaser shall have no obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to its obligations to do so have been met, satisfied, or waived.

23. The Purchaser and the City may consummate the transactions under the Purchase Agreement at any time after the entry of this Order (including immediately thereafter) by waiving all closing conditions set forth in the Purchase Agreement that have not been satisfied and by proceeding to close such transactions, without any notice to the Court, any pre-petition or post-petition creditor of the Debtors, or any other party in interest.

24. Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the relevant Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are directed to be transferred to Purchaser as of the Closing Date, except to the extent otherwise provided in the Purchase Agreement. Without limitation of the foregoing, the Trustee shall cooperate in the transfer of such permits, licenses, registrations, approvals, and authorizations to the Purchaser.

25. After the Closing, the balance of the Purchase Price paid to the Trustee shall be disbursed by the Trustee as follows:

- (a) Payment of all normal and ordinary settlement charges;
- (b) Payment of the Debtors' share of the real estate taxes;
- (c) Payment of Trustee's costs of the sale;
- (d) Payment of \$1,247.00 plus 10% interest from August 24, 2005 to the State of West Virginia to satisfy two judgments against George Harold Berthy, Jr. (Case Nos. 04M-7313 and 04M7314);

(e) Payment to First United Bank and Trust in the amount of \$200,000.00 in full and complete satisfaction of (i) its disputed first priority lien on a tiny portion (530 square feet) of the Augusta real property assets valued at \$40,000.00, and (ii) its first priority lien on the McCoy 6 Transfers valued at \$160,000.00;

(f) Payment into the Trustee's escrow account of \$2,750,000 to be held pending the resolution of the priority of mechanic's lien in favor of Landau Building Company ("Landau") and Laurita Excavating, Inc. ("Laurita") as determined by the Circuit Court of Monongalia County, West Virginia, Division II, in the civil proceeding styled *Landau Building Company v. Augusta Apartments, LLC, et al.*, Case No. 08-C-219, which decision and the priority of which lien is the subject of a pending appeal by PNC Bank, National Association, successor to National City Bank ("PNC"). The escrow account funds shall only be released by the Trustee in accordance with the Bankruptcy Court's further order which will be consistent with the final non-appealable resolution of the pending litigation as to the amount and priority of the mechanic's liens, provided that all funds in the escrow account not paid to mechanic's lien claimants shall be paid to PNC.

(g) Payment of the Trustee's statutory commission in an amount up to \$416,250.00, pending further order of the Court, to be paid from the sale proceeds and/or, to the extent funds are available for that purpose, from the Debtor's operating account.

(h) Payment of the balance of the Purchase Price (after the payments provided for in Paragraphs 25(a)-(g) above) to PNC in full and complete satisfaction of its outstanding first priority liens on the Purchased Assets.

26. The Trustee is authorized to cooperate with Purchaser and the City in order for Purchaser to obtain quiet enjoyment of the Purchased Assets, the Easement and the Option

including putting Purchaser into full possession of the Purchased Assets. Except as otherwise expressly provided in this Order, all persons or entities, presently or on or after the Closing Date, in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

27. Effective as of the Closing, the Purchaser, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Purchaser, its successors and assigns, to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Purchaser, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Purchaser, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and to do all acts and things with respect to the Purchased Assets which the Purchaser, its successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Trustee.

28. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Interests shall be self-executing, and neither the Trustee nor the Purchaser or the City shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order. Without limitation of the foregoing, a certified copy of this Order may be filed with the appropriate Clerk and/or recorded with the appropriate Recorder to act to cancel any Interests of record, except the Permitted Encumbrances. The filing or recording of this Order shall provide

full notice of the contents of the Order. In addition, on or before the Closing Date, all parties holding Interests of any kind are authorized and directed to execute such documents and to take all other actions as may be necessary to document the release of any Interests of any kind against the Purchased Assets, the Easement and the Option. If any person or entity that has filed financing statements or other documents or agreements evidencing any Interests in or against the Purchased Assets shall not have delivered to the Purchaser, within a reasonable time after request therefore, termination statements, instruments of satisfaction, or releases of all such Interests with respect to the Purchased Assets, the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets, the Easement and the Option.

29. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets, the Easement and the Option acquired by the Purchaser under the Purchase Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

30. Except as expressly provided in this Order, neither the Purchaser nor the City is assuming nor shall they nor any affiliate or subsidiary of them be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the transactions contemplated by the Purchase Agreement, or any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Purchase Agreement, which liabilities, debts, and obligations

are Interests and are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any affiliate or subsidiary of the Purchaser.

**Additional Provisions**

31. This Order is and shall be binding upon and govern the acts of all entities to the extent allowed by law, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

32. The Purchaser has not assumed and is otherwise not obligated for any of the Debtors' liabilities other than as provided in this Order.

33. Pursuant to Section 1146(a) of the Bankruptcy Code, the transfer of the Purchased Assets, and the execution and delivery of any instrument of transfer by the Debtors pursuant to the Purchase Agreement or this Order shall not be taxed under any law imposing a real estate tax, transfer tax, recording tax, sales tax, a stamp tax, or a similar tax.

34. The automatic stay provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Purchase Agreement and the provisions of this Order.

35. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance

with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estate.

36. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the Purchase Agreement.

37. There were no brokers involved with the negotiation or consummation of the Purchase Agreement, and, therefore, neither the Trustee, Debtors, the Purchaser nor the City shall be liable for any brokers' commissions.

38. Notwithstanding Bankruptcy Rules 6004, 6006 and 7062, this Order shall not be stayed and shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser and the City are free to close under the Purchase Agreement at any time, including immediately upon entry of this Order, subject to the terms of the Purchase Agreement. If, in the absence of any person or entity obtaining a stay pending appeal, the Trustee and the Purchaser and the City close under the Purchase Agreement, the Purchaser and the City shall be deemed to be acting in "good faith" and shall be entitled to the protections of § 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the Purchase Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

39. To the extent any provisions of this Order conflict with the terms and conditions of the Purchase Agreement, the terms and conditions of this Order shall govern and control.

40. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

41. This Court shall retain jurisdiction even after the closing of this case to:

(a) Interpret, implement and enforce the terms of this Order and the Purchase Agreement, all amendments thereto and any waivers or consents thereunder and each of the agreements executed in connection therewith in all respects;

(b) Decide any disputes concerning this Order, the Purchase Agreement or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets, the Easement and the Option and all issues and disputes arising in connection with the relief authorized herein;

(c) Protect the Purchaser, the City, the Purchased Assets, the Easement and the Option against any of the Interests as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability;

(d) Enter orders in aid or furtherance of (i) the transfer of possession and control from the Trustee to the Purchaser and (ii) the transactions contemplated by the Purchase Agreement or to ensure the peaceful use and enjoyment of the Purchased Assets by the Purchaser;

(e) Compel delivery of all Purchased Assets to the Purchaser;

(f) Adjudicate any and all disputes concerning alleged Interests in and to the Purchased Assets, the Easement and the Option, including the extent, validity, enforceability, priority, and nature of any such alleged Interests; and

(g) Adjudicate any and all disputes relating to the right, title or interest of the Debtors or the Estate in the Purchased Assets, the Easement and the Option and the proceeds thereof.

42. The Clerk is directed to transmit copies of this Order to the parties in interest.

Submitted by:

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Reviewed by:

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