



January 31, 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*

Dear Joint Committee on Government and Finance,

Pursuant to West Virginia Code Section 18B-19-13, appended for your review please find a copy of that certain Unit Purchase Agreement, dated January 24, 2011, by and between Bocci, LLC, a West Virginia limited liability company, and West Virginia University Board of Governors, on behalf of West Virginia University, along with a report setting forth a detailed summary of the terms of the agreement, including the name of the property owner and agent involved in the sale, if any.

In this Agreement, West Virginia University Board of Governors, on behalf of West Virginia University, agrees to purchase from Bocci, LLC, that certain Unit #300 of the Marina Tower Condominium Association, Inc., located and situate in the First Ward of the City of Morgantown, Monongalia County, West Virginia, together with all easements, appurtenances and rights relating thereto, and having a street address of 48 Donley Street, Third Floor, for the agreed upon sum of Three Million One Hundred Thousand Hundred Dollars (\$3,100,000.00).

Pursuant to West Virginia Code Section 18B-19-13(c), the attached copy of the agreement and report is being provided at least thirty (30) days prior to the consummation of this acquisition, and pursuant to subsection (f), your committee will meet and review the above-referenced agreement within thirty (30) days.

In the event that you have any questions or need additional information, please feel free to contact me at 304.293.0394.

Respectfully,

A handwritten signature in blue ink that reads 'Shannon N. Mundell'.

Shannon N. Mundell  
Director of Real Estate

cc: West Virginia Higher Education Policy Commission

Report to Joint Committee on Government & Finance

Acquisition of Unit #300 of Marina Tower Condominium Association, Inc., Morgantown, West Virginia  
by  
West Virginia University Board of Governors, on behalf of West Virginia University

By that certain Unit Purchase Agreement dated January 24, 2011, West Virginia University Board of Governors, on behalf of West Virginia University, has agreed to purchase from Bocci, LLC, that certain real property located and situate in the First Ward of the City of Morgantown, Monongalia County, West Virginia, for the agreed upon sum of Three Million One Hundred Thousand Dollars (\$3,100,000.00), payable at closing and settlement. The property is more particularly designated as Unit #300 of the Marina Tower Condominium Association, Inc. in such county and state, together with all easements, appurtenances and rights relating thereto, and having a street address of 48 Donley Street.

Consummation of the acquisition is contingent upon the following: i) Title examination performed by West Virginia University, ii) Due diligence performed by West Virginia University, iii) Approval by the West Virginia University Board of Governors, iv) Approval by the West Virginia Attorney General, v) Approval by the Joint Committee on Government and Finance, vi) Approval of a satisfactory release fee from the lending institution of Bocci, LLC, and vii) Assignment of all leases and rents to West Virginia University.

Upon receipt of all approvals, the closing of such sale will occur on February 28, 2011, unless otherwise mutually agreed upon. No agent was involved in this acquisition.

## UNIT PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** (the "Agreement") is made this 24<sup>th</sup> day of January, 2011, by and between **BOCCI, LLC**, a West Virginia limited liability company, hereinafter referred to as "Seller," and **WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS**, on behalf of WEST VIRGINIA UNIVERSITY, an agency of the state of West Virginia, hereinafter referred to as "Purchaser."

**WHEREAS**, Seller is the developer of a certain common interest community known as Marina Tower (the "Community"), situate at 48 Donley Street in the First Ward of the City of Morgantown, Monongalia County, West Virginia; and

**WHEREAS**, a Declaration Establishing a Plan for Marina Tower Condominium Association, Inc., Pursuant to Chapter 36B of the Code of West Virginia of 1931, As Amended dated the 28<sup>th</sup> day of January, 2010, has been recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1405, at Page 330, and rerecorded in Deed Book 1405, at Page 821 (the "Declaration"); and

**WHEREAS**, the Declaration, among other things, sets forth in great detail, restrictions and protective covenants to which all condominium Unit of the Community, including the condominium Unit described herein is subject; and

**WHEREAS**, Seller will record and deliver to Purchaser a plat of the Community establishing the perimeters of the Community, the locations and sizes of condominium Unit, the General Common Elements, Limited Common Elements, and certain other areas clearly designated on such plat; and

**WHEREAS**, Seller shall provide copies of the Public Offering Statement for the Community, the Articles of Incorporation, and By-Laws for Marina Tower Condominium Association, Inc. (the "Association") which establishes the organization to manage the Community and enforce its rules, regulations, restrictions and protective covenants; and

**WHEREAS**, this Agreement incorporates by reference all the terms and conditions of the Public Offering Statement and the Declaration and all exhibits thereto.

**NOW, THEREFORE, WITNESSETH:** Seller agrees to sell to Purchaser and Purchaser agrees to buy from Seller for the total sum of THREE MILLION ONE HUNDRED THOUSAND DOLLARS (\$3,100,000.00) ("Purchase Price") **Unit #300 of Marina Tower**, First Ward, City of Morgantown, County of Monongalia, State of West Virginia, together with all easements, appurtenances and rights relating thereto as defined in the Declaration and accompanying documents (the "Unit") upon the following terms, conditions and covenants:

1. PURCHASE PRICE. The Purchase Price shall include all costs, assessments, expenses, or other charges associated with or relating to the construction of the General Common Elements, also commonly referred to as a “Unit Surcharge.”

2. PAYMENT OF PURCHASE PRICE. The Purchase Price shall be payable in full in certified funds upon delivery of the deed at Closing.

Seller agrees to convey good and marketable title of the Unit to Purchaser by a proper deed containing covenants of General Warranty, free and clear from all encumbrances and liens, but subject to:

- (a) The Declaration and all matters or documents referenced therein;
- (b) The Articles of Incorporation, By-Laws and rules and regulations of Marina Tower Condominium Association, Inc.;
- (c) The Public Offering Statement and all matters or documents referenced therein;
- (d) All matters of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, that encumbers Seller’s chain of title.

Said deed shall be prepared at Seller’s expense, and because Purchaser is a state agency exempt from taxation, the Seller agrees to pay the following:

- (a) All real estate taxes due on the Community or the Unit for the 2010 entire tax year;
- (b) All real estate taxes due on the Community or the Unit for the 2011 entire tax year and any real estate taxes for subsequent years assessed against the Unit because of Seller’s prior ownership of the Unit. In the event any common elements or common areas of the Community are assessed for real estate taxes, Seller shall pay or cause to be paid the real estate taxes without contribution from Purchaser. Purchaser will assist Seller, to extent permissible by law, by providing to the appropriate taxing authority documentation necessary to address ownership questions that may arise for tax purposes. Seller shall provide evidence of payment of the 2010 real estate taxes at closing. Seller shall provide evidence of payment of 2011 real estate taxes and subsequent years real estate taxes, if applicable, by October 1 of each year. This covenant shall survive closing and delivery of the deed; and
- (c) The following closing costs: transfer stamps, recording fees, and deed preparation.

3. CONTRACT CONTINGENCIES. This Agreement shall be subject to the following contingencies:

- (a) Prior to Closing, the final terms and conditions of this Agreement, any necessary subsequent agreements, and the Deed, to the extent necessary or required by law, have been approved by the West Virginia University Board of Governors, at its sole and absolute discretion.
- (b) Prior to Closing, the final terms and conditions of this Agreement, any necessary subsequent agreements, and the Deed, to the extent necessary or required by law, have been approved by the West Virginia Higher Education Policy Commission.
- (c) Prior to Closing, the final terms and conditions of this Agreement; any necessary subsequent agreements; and the Deed, to the extent necessary or required by law, have been approved as to form by the West Virginia Attorney General's Office.
- (d) Prior to Closing, pursuant to W.Va. Code §18B-19-13(a) and (b), this Agreement, any necessary subsequent agreements, and the Deed, to the extent necessary or required by law, and a report setting forth a detailed summary of the terms and conditions, including the name of the property owner(s) and the agent(s) involved in the sale, shall be provided to the Joint Committee on Government and Finance for prior review. Further, pursuant to W.Va. Code §18B-19-13(c), a copy of this Agreement, subsequent agreements, and a summary report shall be provided at least thirty (30) days before any purchase. The Joint Committee on Government and Finance, pursuant to §18B-19-13(f), shall meet and review the Agreement, any subsequent agreements, and report within thirty (30) days of receipt. This Agreement must be favorably reviewed and approved, pursuant to statutory authority, by the Joint Committee on Government and Finance.
- (e) Purchaser's ability to receive a financing commitment by the Closing date.
- (f) Purchaser's satisfactory review and examination of the title to the real property by Purchaser's legal counsel. In the event that the results of such title examination shall reveal that the Seller does not hold good and marketable title to such property, Seller shall be notified of the defects of title in writing, and Seller shall use all reasonable efforts to cure such defects by the date of the consummation of the sale. In the event that Seller is unable to clear such title, this Agreement may be modified or

canceled at the option of Purchaser.

- (g) Purchaser's satisfactory completion of all due diligence inspections in and to the Community and the Unit that Purchaser in its sole discretion deems appropriate. Such due diligence inspections may include, but are not limited to environmental audits, zoning review, engineering and architectural inspections, survey and confirmation of parking availability. In the event the results of the inspections disclose matters unacceptable to Purchaser, Purchaser shall notify Seller and the Seller agrees to use reasonable efforts to cure the objectionable item. In the event the Seller is unwilling or unable to cure the objectionable item, this Agreement may be modified or canceled at the option of Purchaser.
- (h) Seller shall not be obligated to convey the Unit unless it receives a satisfactory release fee, as determined by Seller, in its sole and absolute discretion, relating to Unit 3, from its lending institution.
- (i) Within twenty (20) days of execution of this Agreement, Seller shall disclose and deliver to Purchaser any and all leases encumbering the Unit, including but not limited to, Booz, Allen and Hamilton, Inc.
- (j) At Closing, Seller shall assign any and all leases and rents to Purchaser.

4. POSSESSION. Seller shall deliver possession of the Property to Purchaser on the date of the consummation of the sale in a vacant condition without any tenants or any of Seller's or tenant's personal property, except for the tenancy and personal property of Booz, Allen and Hamilton, Inc.

5. CLOSING. Closing shall occur on or before February 28, 2011, unless otherwise mutually agreed upon.

6. RISK OF LOSS. The risk of loss or damage to the Unit by fire or other casualty shall remain with the Seller until the properly executed deed to the Unit is delivered to Purchaser.

7. THE ASSOCIATION AND THE MASTER ASSOCIATION. Subject to all constitutional, statutory, and regulatory immunities, limitations and restrictions, which will limit or exempt Purchaser's obligations of compliance, Purchaser, by execution of this Agreement, agrees (a) to comply with all of the provisions of the Public Offering statement and exhibits attached thereto and the Declaration, (b) to abide by the Articles of Incorporation and By-Laws

of the Association, and by all of the rules and regulations adopted by the Association as subsequently amended, and (c) to pay and acknowledge continuing liability to pay all dues and assessments properly levied against the Unit by the Association. The terms of this paragraph shall survive and not merge with the delivery, acceptance and recordation of the deed of conveyance.

8. AMENDMENT OR CHANGE OF INSTRUMENTS.

- (a) Seller reserves the right, upon notice to Purchaser prior to settlement hereunder, to make such modifications, additions or deletions in or to any of the instruments as may be approved or required by any permanent lender, public authority or title company insuring title, provided that:
  - (i) The Purchase Price hereunder shall not be increased or decreased; or
  - (ii) A material physical modification of the layout or location of the Unit shall not be required; or
  - (iii) The financial obligations of Seller hereunder shall not be changed.
- (b) Notwithstanding anything contained herein to the contrary, Seller reserves the right, to which approval Purchaser shall not unreasonably withhold, to amend the Declaration, the Public Offering Statement and all its exhibits at any time permitted by law or permitted under the terms of the documents.

9. ASSIGNMENT. This Agreement may not be transferred or assigned by Purchaser. Purchaser expressly agrees not to offer for sale, list with a real estate agent or broker for sale, market or attempt to sell, market or convey the Unit or any contract rights to purchase the Unit, prior to the recordation of the deed of conveyance of the Unit to Purchaser.

10. MERGER. All understandings and agreements heretofore made between the parties hereto are contained on this Agreement which expresses the parties' entire agreement, and no representation, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be altered, enlarged, modified or changed except by an instrument in writing executed by all of the parties hereto. Any changes or modifications made to this Agreement must be reduced to writing, signed by all parties hereto and attached hereto and made a part hereof. Except as expressly provided to the contrary herein, the terms of this Agreement shall merge into and not survive the delivery and recordation of the deed of conveyance except as provided in paragraph 7.

11. NOTICE. Whenever, by term of the Agreement, any notice is required to be given unless specifically otherwise provided, notice shall be conclusively considered given when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to Purchaser at Purchaser's address and to the Seller at its address.

12. MISCELLANEOUS. The laws of the State of West Virginia shall govern the interpretation validity and construction of the terms and conditions of this Agreement. The parties to this Agreement mutually agree that it shall be binding upon them and each of their respective heirs, personal representatives, successors and assigns. The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. The captions of this Agreement are for the convenience of the parties and shall not be considered as a material part hereof.

13. TITLE. Title to the subject property is to be held as follows: West Virginia University Board of Governors, on behalf of West Virginia University, an agency of the state of West Virginia.

14. CHAIN OF TITLE. For title examination purposes, Seller took title to the Unit by the following deeds:

<u>Grantor</u>	<u>Date</u>	<u>Deed Book Reference</u>
Kenna J. Weaver	February 23, 2004	Book 1267, at Page 437
J&K Properties, LLC	February 23, 2004	Book 1267, at Page 440
Blue Chip Investments, LLC	October 9, 2007	Book 1352, at Page 475

15. HOMEOWNER'S ASSOCIATION FEES/COMMON AREA EXPENSE.

The projected monthly common expense assessment for each Unit can be calculated by the following formula:

$$\frac{\text{Interest in General}}{\text{Common Elements}} = \frac{(\text{Area of the Unit})}{(\text{the Total Area in all Units})} \times 100$$

(Total Area of the Unit / Total Area of all Units) X total projected Association Expenses / twelve (12) months.

The square footage may be rounded upward or downward by up to 100 square feet in order to eliminate differences based on minor variations in the sizes of a Unit. The percentages also may be rounded in order that the total for all Units equals exactly 100%.



16. OTHER CONDITIONS.

PURCHASER MAY CANCEL THIS AGREEMENT WITHOUT ANY PENALTY OR OBLIGATION WITHIN 15 DAYS OF RECEIPT OF A PUBLIC OFFERING STATEMENT. IF PURCHASER HAS EXECUTED THIS AGREEMENT MORE THAN 15 DAYS AFTER RECEIVING THE PUBLIC OFFERING STATEMENT, PURCHASER MAY ONLY CANCEL THIS AGREEMENT ACCORDING TO THE TERMS SET FORTH HEREIN.

IF PURCHASER DECIDES TO CANCEL THIS AGREEMENT, PURCHASER MUST NOTIFY THE SELLER IN WRITING OF SUCH INTENT TO CANCEL. PURCHASER'S NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT. (POSTMARK) TO:

BOCCI, LLC  
Two Waterfront Place, Suite 1201  
Morgantown, West Virginia 26501

PURCHASER SHOULD NOT RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS AGREEMENT AND THE PUBLIC OFFERING STATEMENT AND ALL ATTACHMENTS HERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SELLER:

**BOCCI, LLC**, a West Virginia Limited Liability Company

By: \_\_\_\_\_

  
Parry G. Petroplus

Its: Manager

PURCHASER:

**WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS,**

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

By: \_\_\_\_\_

  
Narvel G. Weese, Jr.

Its: Vice President of Administration and Finance