

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:	)	
	)	
WEST VIRGINIA HIGH TECHNOLOGY	)	Chapter 11
CONSORTIUM FOUNDATION and	)	
HT FOUNDATION HOLDINGS, INC.,	)	Case No.: 16-bk-00806
	)	Case No.: 16-bk-00807
Debtors.	)	
	)	Jointly administered at Case No.
	)	16-806

**MOTION OF THE DEBTOR HT FOUNDATION HOLDINGS, INC. TO SELL REAL  
PROPERTY FREE AND CLEAR OF THIRD PARTY INTERESTS, LIENS, CLAIMS,  
CHARGES AND/OR ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(b) and §363(f)**

AND NOW, comes HT Foundation Holdings, Inc. ("HTFH") and files this *Motion to Sell Real Property Free and Clear of Third Party Interests, Liens, Claims, Charges and/or Encumbrances Pursuant to 11 U.S.C. §§363(b) and 363(f)* (this "Motion") and in support thereof avers as follows.

**Introduction**

1. On August 4, 2016 ("Petition Date"), HTFH and the West Virginia High Technology Consortium Foundation ("WVHTC" and collectively with HTFH, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code").

2. The Debtors continue to manage and operate their businesses and property as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or committee of creditors has been appointed in this case.

3. WVHTC is a West Virginia non-profit corporation incorporated in 1993. Additionally, WVHTC is an organization exempt from taxation under 26 U.S.C. ("IRS Code") §501(c)(3). HTFH, a West Virginia non-profit corporation incorporated in 2008, is an IRS Code

§501(c)(2) organization that is related to WVHTC. WVHTC, along with HTFH, two other non-debtor § 501(c)(2) charitable title-holding organizations related to WVHTC, and a single purpose entity LLC, of which WVHTC is the sole member, foster business development, promote partnerships between state, national, and international technology companies and institutions, and conduct cutting-edge research and development under contracts with federal and state government.

4. As part of their operations, WVHTC and its related organizations, including HTFH own, develop, and manage certain real property, buildings, and facilities, which, after development, are leased to various government and private tenants.

5. HTFH is the owner of certain real property and improvement thereon commonly referred to as the “Training Center,” consisting of approximately 24,000 gross square foot facility situated on approximately 3.19 acres of land in the I-79 Technology Park, located in Fairmont, Grant District of Marion County, West Virginia (the “Training Center”).

#### **Jurisdiction and Venue**

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

#### **Potential Liholders**

7. Huntington National Bank (“HNB”) is an Ohio banking corporation, having a mailing address of 17 South High Street Columbus, Ohio 43216 and c/o Buchanan Ingersoll & Rooney, P.C. One Oxford Centre, 301 Grant St., 20<sup>th</sup> Floor Pittsburgh, Pennsylvania 15219. As of the Petition Date, HNB held an undersecured claim in the amount of approximately \$19 million against the Debtors, which claim is partially secured by the Real Property.

8. The Economic Development Administration, a bureau of the United States

Department of Commerce (the “EDA”) has an address of 601 Walnut St. Suite 140-S Philadelphia, Pennsylvania 19106 and has asserted a contingent, unliquidated claim against the Debtors, which it claims is secured by real property owned by the Debtors by operation of law.

**Relief Requested**

A. Sale of Training Center

9. Pursuant to this Motion, HTFH seeks to sell the Training Center to the Trustee of Life United Methodist Church (the “Buyer”), pursuant to a certain Agreement for the Purchase of Training Center dated June 12, 2017 and attached hereto as Exhibit A (the “Sale Agreement”).

B. Marketing of Training Center

10. On October 19, 2016, the Debtors filed an *Emergency Application for an Order Authorizing the Debtors to Employ Eastern Valley Associates, LLC as Real Estate Broker* [Docket No. 126], and which this Court granted by Order dated October 25, 2016 [Docket No. 144].

11. Since October 25, 2016, Eastern Valley Associates, LLC (the “Broker”) has undertaken efforts to market and sell, *inter alia*, the Training Center, including listing the Training Center for sale on commercial real estate sites, including loopnet.com, but the Broker received no offers for the purchase of the Training Center.

12. HTFH has undertaken its own efforts to market and sell the Training Center since October 2016, including contacting the Marion County Chamber of Commerce to assist in notification of the sale of the property to potential buyers, contacting local and statewide business regarding the sale of the property, and has received only one (1) offer, that of the Buyer.

C. Terms of Sale

13. HTFH proposes to sell and the Buyer proposes to purchase the Training Center

pursuant to the terms of the Sale Agreement at a purchase price of One Million Eight Hundred Thousand Dollars (\$1,800,000) (the “Purchase Price”).

14. With the exception of those representations and warranties set forth in the Sale Agreement (see Exhibit A at ¶8) the sale of the Training Center to any successful purchaser(s) shall be a sale in “AS IS”, “WHERE IS” condition, without representations or warranties of any kind whatsoever, including but not limited to implied warranties of merchantability and/or fitness for a particular purpose (if applicable), and the participation of purchaser(s) in the sale process shall constitute an agreement and representation that they have inspected the Training Center, and are purchasing same solely on the basis of such inspection, and not as a result of any representation of any kind whatsoever by the Debtors or their agents, except as specifically set forth herein.

15. The successful purchaser shall be required to deposit a deposit in the amount of Ten Thousand Dollars (\$10,000) at the time of the approval of the sale by the Court, with the balance to be paid at closing, with all such payments to be made via cash, certified check, wire transfer or such other forms of assured and guaranteed payment as may be acceptable by HTFH, **TIME BEING OF THE ESSENCE**. Pursuant to the Sale Agreement, the Buyer has heretofore paid the required deposit to Tech Park Non-Profit Holdings as escrow agent. Said deposit shall be refundable only as set forth in the Sale Agreement.

16. There are no tenants in the Training Center, so possession shall be delivered at closing, free and clear of any tenancies affecting the Training Center. Closing shall occur on or forty-five (45) days from the date of a final Court Order approving the sale, at a mutually agreeable time and location.

17. Closing shall be contingent on the approval of the Bankruptcy Court and

agreement by HNB allowing for a written easement or license in which the Buyer, its successor and assigns may use the parking area located adjacent to the Training Center, which is owned by WVHTC, during specified days and hours for the Buyer's proposed church activities.

18. At closing, HTFH shall convey the Training Center to the successful purchaser in fee simple by customary West Virginia general warranty deed.

19. HTFH has not promised, nor has it been promised, any consideration for the sale proposed herein, except as set forth herein and in the Sale Agreement.

20. In the event of the failure of the purchaser(s) to close within the required time frame for other than the inability/refusal of HTFH to close, HTFH may, at its option, declare a default and retain the deposit for the benefit of the estate, and re-sell the Training Center, unless said failure to refuse to close is the result of the failure of HTFH or its estate to have complied with the terms of this Motion and related Order.

21. Any real estate transfer taxes which may become due as a result of the sale contemplated herein shall be paid equally by the Buyer and HTFH. As closing, any township, school district and county real estate taxes, to the extent applicable, shall be prorated as levied by the taxing bodies.

D. Best Interest of the Debtor and Its Estate

22. HTFH believes, and therefore avers, that the best interest of the estate and its creditors will be served by this Court, pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, authorizing the sale of the Training Center to the Buyer, free and clear of all liens, security interests, claims, charges, interests, and all encumbrances of any kind or nature whatsoever (excepting only easements and rights-of-way, as well as restrictions, exceptions, reservations and covenants of record and/or as an inspection of the Training Center would disclose), all of which

shall be divested from the Training Center and attach to the proceeds of the sale, in order of their priority.

23. HTFH believes, and therefore avers, that the aforementioned method of sale is fair and reasonable, and in the best interest of this estate, and that a higher and better price would not be obtained through a continued marketing of the Training Center. The Training Center has been on the market since October 2016 and the Buyer has been the only potential buyer.

E. Sale Satisfies Section 363(f) of the Bankruptcy Code

24. Pursuant to section 363(f) of the Bankruptcy Code, HTFH may sell or otherwise transfer the Training Center free and clear of all liens and encumbrances because one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied.

25. HTFH expects that HNB<sup>1</sup> and the EDA will consent to the sale of the Training Center.

26. Alternatively, HTFH asserts that section 363(f)(2), (3) and/or (5) is satisfied because: (i) HNB and the EDA are deemed to have consented to the sale if it expressly consents or implicitly consents by not objecting to the sale, see In re: Dura Automotive Systems, Inc., No. 06-11202, 2007 WL 7728109 at \*6 (Bankr.D.Del. August 15, 2007)); Future Source, LLC v. Reuters, Ltd., 312 F.2d 281 (7<sup>th</sup> Cir. 2002), cert denied, 538 U.S. 962 (2003) (holding that interest holder's failure to object to sale constitutes consent for purpose of section 363(f)(2) of the Bankruptcy Code so long as there was adequate notice of the sale); (ii) the purchase price for the Real Estate is greater than the aggregate value of all liens against the Training Center,<sup>2</sup> see In re: Milford Group, Inc., 150 B.R. 904 (Bankr. M.D. Pa. 1992); and/or (iii) HNB and the EDA could be compelled, in a legal or equitable proceeding, to take partial payment of their respective

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<sup>1</sup> Pursuant to the Sale Agreement, HNB's approval of an easement is required. See Exh. A at ¶4.

<sup>2</sup> HNB's valuation of the Real Property is One Million Seven Hundred Thousand Dollars (\$1,700,000.00).

claim upon the sale of the Training Center. See In re: Healthco Int'l., Inc., 174 B.R. 174 (Bankr.D. Mass. 1994).

G. Good Faith Buyer Under Section 363(m)

40. HFTH believes, and therefore avers, that the Buyer is a good faith Buyer, entitled to all of the protections and benefits accorded such buyers pursuant to section 363(m) of the Bankruptcy Code. See Willimain v. Kavitz, 764 F.2d 1019 (4<sup>th</sup> Cir. 1985); In re: Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986).

H. Proposed Disbursement of Sale Proceeds

41. HFTH proposes to distribute the proceeds of the sale of Training Center as follows:

- a. First, to the costs of sale, specifically including, but not limited to, payment for advertising, printing, mailing and notice fees and United States Trustee's fees that will become due upon the proceeds being distributed; and other such closing costs as may be properly incurred to effect said closing, including, but not limited to, real estate transfer taxes and brokers' fees; and
- b. Second, to lien holders in order of priority of their liens. Specifically, after payment of the costs and taxes identified in subsection 41(a), HFTH proposes to pay all remaining proceeds to HNB as it holds a senior properly perfected security interest in the Training Center.

WHEREFORE, HFTH respectfully requests this Court enter an Order granting HFTH the authority to sell the Training Center to the Buyer pursuant to the terms and conditions of the Sale Agreement and free and clear of third party interests, liens, claims, charges, and/or encumbrances pursuant to 11 U.S.C. §363(b) and 363(f).

Dated: June 22, 2017

Respectfully submitted,

CAMPBELL & LEVINE, LLC

s/David B. Salzman

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**EXHIBIT A**

**AGREEMENT FOR  
THE PURCHASE OF REAL PROPERTY**

THIS AGREEMENT FOR THE PURCHASE OF REAL PROPERTY (the “Agreement”) is entered and effective the 13th day of January, 2017 by and among HT FOUNDATION HOLDINGS, INC., a West Virginia 501(c)(2) non-profit title-holding corporation with a principal place of business located at 1000 Technology Drive, Suite 1000, WV 26554, its successors and assigns (hereinafter also referred to as “Seller”) and the TRUSTEES OF LIFE UNITED METHODIST CHURCH with a principal place of business located at 1564 Mary Lou Retton Dr, Fairmont, WV 26554, its successors and assigns (hereinafter also referred to as “Buyer”). The Seller and Buyer are also referred to, individually, as “Party” and, collectively, as the “Parties” in this Agreement.

WHEREAS, Seller is the record title owner of the a parcel of real property and improvements thereon, including an approximate 24,000 gross square foot facility known as the “Training Center” situate in the I-79 Technology Park located in Fairmont, Grant District in Marion County, West Virginia consisting of the surface only of approximately 3.19 acres, more or less (the “Real Estate”); and

WHEREAS, on August 4, 2016, Seller filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et. seq.* (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of West Virginia (the “Bankruptcy Court”), as case number 1:16-bk-00807 (the “Bankruptcy Case”); and

WHEREAS, the Seller continues to manage and operate its business and the Real Estate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or committee of creditors has been appointed in the Bankruptcy Case; and

WHEREAS, subject to approval from the Bankruptcy Court, Seller wishes to sell and transfer and all of its right, title and interest in and to the Real Estate and all improvements thereon and appurtenances thereto to Buyer; and

WHEREAS, by and through this Agreement, the Seller agrees to sell and the Buyer agrees to buy all of the right, title and interest in and to the Real Estate, including the improvements thereon and appurtenances thereto; and

NOW, THEREFORE, this Agreement is entered in consideration of the mutual covenants, terms and conditions and other valuable consideration granted and received by the Parties with the understanding that the Real Estate to be sold is subject to the exceptions, reservations and conditions contained in prior deeds in the chain of title in addition to any rights of ways and easements, insofar only as the same are now in force and effect.

This Agreement is also made subject to the following covenants, terms and conditions:

(1) Description of Real Estate. The Real Estate is more particularly described as being the surface only of approximately 3.19 acres, more or less, including all improvements thereon and encumbrances thereto as set forth in the deed dated the 17<sup>th</sup> day of July, 2008 in the deed of conveyance from West Virginia High Technology Consortium Foundation, grantor to HT Foundation Holdings, Inc., grantee, as recorded in the Office of the Clerk of the County Commission of Marion County, West Virginia in Deed Book 1038 at Page 446 and being subject to the easements, right-of-way and other conditions of record and the Covenants and Restrictions applicable to the I-79 Technology Park Association set forth in the aforesaid Clerk's Office in Deed Book 1083 at Page 147. The Real Estate is known, for tax purposes as Map 20, Part of Parcel 80, Grant Annex, Marion County, West Virginia and is assessed as tax-exempt.

(2) Purchase Price and Earnest Money Deposit. Seller hereby agrees to sell, transfer and deliver to Buyer all of Seller's right, title and interest in and to the Real Estate described herein for a purchase price in the amount of **One Million Eight Hundred Thousand Dollars (\$1,800,000.00)** according to the terms and conditions of this Agreement. In conjunction

with signing this Agreement, Buyer shall pay Seller a down-payment or earnest money payment in the amount of Ten Thousand Dollars (\$10,000), which shall be held in escrow by Seller and applied to the purchase price at closing.

(3) Closing Date: The closing of the purchase and sale of the Real Estate (the "Closing") shall be held within forty-five (45) after the Bankruptcy Court enters an Order approving of this Agreement and the sale and transactions contemplated herein. The location of the Closing shall be at Seller's office located at 1000 Galliher Drive, Fairmont, WV 26554 or at an alternate location mutually agrees upon.

(4) Contingencies: This Agreement and the obligations for the Seller to sell and the Buyer to buy the Real Estate shall be subject to satisfaction of the following contingencies which, except for (a) and (d) below, shall be accomplished within forty-five (45) days of the execution of the Agreement by the Parties:

- (a) This Agreement and the transactions contemplated herein shall be approved by the Bankruptcy Court. The Buyer recognizes and agrees that the sale contemplated herein is subject to competitive bidding in accordance with Section 363 of the Bankruptcy Code;
- (b) The approval by the Bankruptcy Court and Huntington National Bank allowing for a written easement or license in which the Buyer, its successors and assigns may use the parking area, located adjacent to the Real Estate which is owned by WVHTCF, during specified days and hours for Buyer's proposed church activities;
- (c) The approval by vote of the Church Conference, on behalf of Buyer, for the Trustees of Buyer to proceed with the purchase of and closing for and to accept the transfer of the Real Estate.
- (d) **Ability of buyer to obtain necessary financing**

If the contingencies (b), (c), (e), or (d) are not met within **sixty (60)** days, the Buyer shall have seven (7) days to provide Seller written notice of termination of this Agreement. If the contingencies (a) or (d) are not met within one-hundred twenty (120) days, either party may terminate this Agreement upon written notice to the other Party. Upon receipt of any such termination, the earnest money deposit shall be returned to Buyer and this Agreement shall be deemed null and void. If Buyer fails to timely provide written notice of termination, then Buyer shall be deemed to have waived any right to terminate this Agreement pursuant to this Section 4.



(5) Broker's Fees. The Parties acknowledge and agree that there are no other brokers, agents or persons to whom a duty or fee is owed for the sale and transfer of the Real Estate.

(6) Closing Conditions. At the Closing, Seller shall deliver to Buyer the following items, which items shall be in form and substance reasonably satisfactory to Buyer:

(i) a properly executed and acknowledged general warranty deed in substantially the same form as the Deed;

(ii) an owner's affidavit affirming no mechanic's liens, possession, hazardous waste and underground storage tanks affect the Real Estate;

(iii) a duly executed FIRPTA Non-Foreign Person Certificate, in a form satisfactory to counsel for Buyer and/or Title Company;

(iv) actual, sole and exclusive physical possession of the Real Estate;

(v) any documentation required with regard to filing by the closing agent of forms 1099-S or any certifications required by WV Code § 11-21-71B, with regard to non-resident withholding taxes;

(vi) such other documents as are required to be delivered by Seller to Buyer on or before the Closing pursuant to the terms of this Contract or as are reasonably necessary;

(vii) such other documentation as may be reasonably required for issuance of title insurance or is usual and customary with regard to commercial real estate transactions in Marion County, West Virginia.

(7) Seller's Obligations. During the term of this Agreement, Seller shall: (a) continue to bind general liability insurance applicable to Seller's ownership of the Real Estate; and (b) continue to pay the real estate taxes, if any, utilities and all other costs associated with the Real Estate in a timely manner.

(8) The Real Estate improvements are to be sold "as-is" however, the risk of loss or damage to the Real Estate and any improvements, including structures, by fire or other casualty until the deed of conveyance is transferred is assumed by the Seller. Accordingly, Seller shall continue to bind insurance coverage for the premises and improvements located within and on the Real Estate until closing. If the Real Estate or improvements thereon are damaged or destroyed, in whole or in part, by casualty prior to closing, the Buyer shall have the option of either (i) terminating this Agreement and receiving return of the earnest money deposit, or (ii) receiving the insurance proceeds received because of the casualty and proceeding to Closing.

(9) Assignment. This Agreement shall not be assigned unless such assignment is consented to by both Parties, and such consent is required to be in writing.

(10) Closing Costs. At closing, Seller shall be responsible for paying for deed preparation and transfer stamps and pro rata taxes, if any, owed up to the date of closing, Seller's real estate broker fee and any other outstanding costs due and owing and related to the Real Estate which exist at the time of Closing other than those expressly set forth herein or otherwise attributable to Buyer's activities. Buyer shall be responsible for costs related to a title examination, title insurance, Buyer's purchase and closing costs, legal costs, costs related to surveys, inspections or other examinations of the Real Estate and Buyer's recording fees.

(11) Personal Property. The following personal property shall convey with the Real Estate: None.

(12) Parties to be Bound. The parties to this contract mutually agree that it shall be binding upon their respective heirs, executors, administrators, successors, or assigns.

By signing below, the Parties acknowledge their agreement to be bound by the terms and

conditions of this Agreement and affirm that they have the authority to bind their respective Parties in the representative capacity shown below.

SELLER:

HT FOUNDATION HOLDINGS, INC.  
a West Virginia 501(c)(2) title holding corporation

By:   
James L. Estep  
President and Chief Executive Officer

BUYER:

TRUSTEES OF LIFE UNITED METHODIST CHURCH

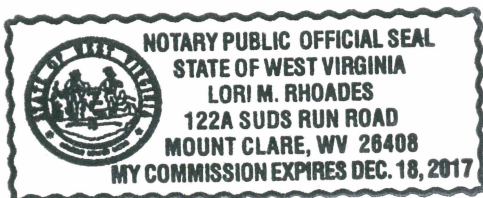
By:   
Ray Urse, Chair

STATE OF WEST VIRGINIA;

COUNTY OF MARION, to-wit:

Taken, subscribed and sworn to before me, a Notary Public in and for the county and state aforesaid, this 12<sup>th</sup>, day of June, 2017.

My commission expires: December 18, 2017.



  
NOTARY PUBLIC