

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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In re : CHAPTER 11  
 :  
YOUNGSTOWN OSTEOPATHIC : JUDGE WILLIAM T. BODOH  
HOSPITAL ASSOCIATION, :  
 : CASE NO. 99-40663  
Debtor. :  
-----X

**MOTION FOR ORDER (i) AUTHORIZING DEBTOR TO ENTER INTO  
AND PERFORM UNDER HOSPITAL FACILITY REAL ESTATE PURCHASE  
AGREEMENT AND (ii) APPROVING THE SALE OF DEBTOR'S HOSPITAL  
FACILITY TO PURCHASER OR SUCCESSFUL COMPETITIVE BIDDER FREE  
AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES**

Youngstown Osteopathic Hospital Association, debtor and debtor in possession (the "Debtor"), pursuant to sections 105(a) and 363(b) and (f) of Title 11 (the "Bankruptcy Code") of the United States Code and Bankruptcy Rules 2002(a)(2), (c)(1), (k), and (m) and 6004, hereby moves (the "Motion") for entry of an order (i) authorizing the Debtor to enter into and perform under a Real Estate Purchase Agreement dated as of October 4, 2001 (the "CMD Agreement") providing for the sale of the Premises (defined below) to CMD Realty Group, LLC ("CMD" or the "Purchaser") and, in connection therewith, authorizing Joseph R. Mortellaro, Jr., ("Mr. Mortellaro"), the Debtor's Controller, to execute, on the Debtor's behalf, the CMD Agreement and other necessary documentation in connection therewith and (ii) authorizing the sale of the Premises, free and clear of all liens, claims, and encumbrances, to the Purchaser or to a competitive bidder submitting a higher and better bid (the "Successful Competing Bidder") in accordance with the Competitive Bidding Procedures (defined in the Sales Procedures Motion filed concurrently herewith, as described below) as approved by the Court.

In support of this Motion, the Debtor respectfully represents as follows:

Template OGC 002

2/14/02 OGC 01

## **JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Sections 105(a) and 363(b) and (f) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004 provide the statutory predicates for the relief requested herein.

## **BACKGROUND**

2. On March 11, 1999 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to section 1107 of the Bankruptcy Code, the Debtor continues to manage its property and assets as a debtor in possession.

3. The Debtor is a not-for-profit hospital association which operated a major general hospital in Youngstown, Ohio. The Debtor's hospital facility, located about two miles from downtown Youngstown, consist of approximately 22 parcels of real property and several connecting buildings, ranging from two to five stories, containing, altogether, more than 200,000 square feet of floor space (the "Premises"). The legal description of the Premises is annexed as an exhibit to the CMD Agreement, which is annexed hereto as Exhibit "A".

4. Although the Debtor continued operating its business for a period of time following the Petition Date, it was compelled to cease operations as a consequence of the significant decline in patient admissions following a labor strike by the International Brotherhood of Teamsters Local Union No. 377. Accordingly, following the discharge of all of its patients, the Debtor ceased operations on March 25, 2000.

5. Prior to September 1, 1990, the Debtor was the owner in fee simple of the Premises. In September 1990, a complex series of transactions were effectuated for the purpose of raising

construction funds through the issuance of certain bonds. To secure payment under the bonds, the Debtor arranged for a letter of credit to be issued by PNC Bank, N.A. ("PNC Bank") in favor of a bond trustee and the Premises was leased from the Debtor by Mahoning County, the issuer of the bonds, and sub-leased back to the Debtor (the "Lease"). Subsequent to March 25, 2000, the Debtor was in default of its obligations under the bonds and under the Lease of the Premises and, based thereon, the bond trustee accelerated the debt obligations under the bonds and the Lease and effected a draw under the letter of credit to satisfy the bondholders. As the bondholders have been satisfied from the letter of credit, and the Lease satisfied by its own terms, the Debtor has the right to sell the Premises to satisfy its obligations under the letter of credit obligation owing to PNC Bank pursuant to a certain reimbursement agreement, which reimbursement agreement obligation is secured by a mortgage on the Premises and a security agreement in favor of PNC Bank.

#### **RELIEF REQUESTED**

6. Subsequent to the cessation of operations, the Debtor commenced an orderly liquidation of its assets. In connection therewith, the Debtor retained a real estate broker, Kutlick Platz Realty, L.L.C. ("KPR"), for purposes of marketing the Premises. In April, 2001, the Debtor filed a motion, seeking *inter alia*, authorization to sell the Premises to Mahoning County Chemical Dependency Programs, Inc. ("MCCD") and a related procedures motion for an order prescribing the form and manner of notice, competitive bidding procedures and a topping fee in favor of MCCD. This Court entered an order approving the procedures motion and an auction was scheduled by the Debtor, in the event that any competitive bids were timely submitted.

7. Prior to the commencement of an auction, MCCD withdrew its offer and no other parties submitted bids for the Premises, despite strong expressed interests in the purchase of the

Premises. Accordingly, the auction was postponed. However, the Debtor, by and through KPR, has continued to solicit interest in the Premises and has received numerous inquiries as to the sale of the Premises.

### **The Agreement with CMD**

8. CMD has agreed to purchase the Premises pursuant to the terms and conditions of the CMD Agreement, a copy of which is attached hereto as Exhibit "A". The Debtor has determined that, under present conditions, the best way to preserve the value of the Premises to the Debtor's estate is to sell the Premises to CMD, subject to the receipt of higher and better bids submitted in accordance with Competitive Bidding Procedures.

9. Subject to the terms of the CMD Agreement, CMD has agreed to pay the Debtor \$150,000 (the "Purchase Price") for all of the Debtor's rights, title, and interest in the Premises, free and clear of all liens, claims, and encumbrances, provided, however, that the Debtor's sale of the Premises to CMD is subject to the receipt of higher and better bids submitted in accordance with Competitive Bidding Procedures as approved by the Bankruptcy Court.

10. The Debtor requests authority to enter into and perform under the CMD Agreement and that Mr. Mortellaro be authorized to execute the CMD Agreement and other ancillary documents on the Debtor's behalf. In addition, the Debtor requests authority, pursuant to sections 363(b) and 363(f) of the Bankruptcy Code and Bankruptcy Rule 6004, to sell the Premises to the Purchaser pursuant to the CMD Agreement, free and clear of all liens, claims, and encumbrances, or to the Successful Competing Bidder that submits a higher and better bid to purchase the Premises in accordance with the Competitive Bidding Procedures.

### Basis for Approval of Proposed Sale

11. The proposed sale of the Premises to the Purchaser, or to the Successful Competing Bidder, constitutes a sale outside of the ordinary course of the Debtor's business. The Premises constitute an asset of the Debtor's estate. In accordance with section 363 of the Bankruptcy Code, the Debtor, as a debtor in possession, is authorized to sell property of its estate to realize the value thereof and maximize recoveries for its creditors. Section 363 of the Bankruptcy Code provides in relevant part that the Debtor, "after notice and a hearing, may . . . sell . . . other than in the ordinary course of business, property of the estate."<sup>1</sup>

12. Although section 363 of the Bankruptcy Code does not provide an express standard for determining whether the Court should approve any particular proposed use, sale, or lease of estate property, case law consistently applies an "articulated business judgment" standard.<sup>2</sup> Additionally, under section 363 of the Bankruptcy Code, a court should not substitute its business judgment for that of the debtor.<sup>3</sup> Rather, the court should ascertain whether the debtor itself has articulated a valid business justification for the proposed transaction.<sup>4</sup> This is consistent with the "broad authority to operate the business of a debtor . . . [which] indicates

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<sup>1</sup> 11 U.S.C. § 363(b)(1).

<sup>2</sup> See, e.g., *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc.* (*In re Continental Air Lines, Inc.*), 780 F.2d 1223, 1226 (5th Cir. 1986); accord *Stephens Indus., Inc. v. McClung* (*In re McClung*), 789 F.2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Walter v. Sunwest Bank* (*In re Walter*), 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

<sup>3</sup> See, e.g., *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 678 (Bankr. S.D.N.Y. 1989); *In re Highway Equip. Co.*, 61 B.R. 58, 60 (Bankr. S.D. Ohio 1986).

<sup>4</sup> See, e.g., *Lewis v. Anderson*, 615 F.2d 778, 781 (9th Cir. 1979), cert. denied, 449 U.S. 869 (1980).

congressional intent to limit court involvement in business decisions by a trustee . . . . [so that] a court may not interfere with a reasonable business decision made in good faith by a trustee.”<sup>5</sup>

13. Sound business justifications support this Court’s approval of the sale of the Premises. Since its operations ceased, the Debtor no longer requires use of the Premises. Moreover, the Debtor’s sale of the Premises in its chapter 11 case is the most efficient means of disposing of such property and holds the prospect of generating the highest net return for its estate.

14. In connection with seeking approval of a proposed sale of assets, the debtor is generally required to demonstrate that the “proffered purchase price is the highest and best offer” under the circumstances of the case.<sup>6</sup>

15. The CMD Agreement represents the best offer the Debtor has received to date for the Premises. Notwithstanding the lack of a current appraisal of the Premises, the Debtor and its agent, KPR, are sufficiently familiar with the market and potential sales value of the unique buildings constituting the Premises to enable the Debtor to conclude that, in the exercise of its business judgment, the sale to Purchaser on the terms set forth in the CMD Agreement is fair, reasonable, and in the best interests of its estate. However, to ensure maximization of value, the sale of the Premises to the Purchaser is subject to higher and better bids at the Auction Sale (defined in the Sales Procedure Motion). The opportunity for competitive bidding through the Competitive Bidding Procedures, and the concomitant potential for enhancement of the Purchase

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<sup>5</sup> *In re Airlift Int’l, Inc.*, 18 B.R. 787, 789 (Bankr. S.D. Fla. 1982).

<sup>6</sup> *In re Integrated Resources Inc.*, 135 B.R. 746, 750 (Bankr. S.D.N.Y.), *aff’d* 147 B.R. 650 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2nd Cir. 1993); *In re Atlanta Packaging Products, Inc.* 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (debtor’s duty with respect to sales is to obtain the highest price or greatest overall benefit for the estate); *In re Wilson Freight Co.*, 30 B.R. 971, 975 (Bankr. S.D.N.Y. 1983) (debtor’s paramount duty in connection with a sale is to obtain the best price).

Price, provide further assurance that the Debtor is receiving the highest and best offer for the Premises.

### **Good Faith Purchaser**

16. “[W]hen a bankruptcy court authorizes a sale of assets pursuant to section 363(b)(1), it is required to make a finding with respect to the ‘good faith’ of the purchaser.”<sup>7</sup> The purpose of such a finding is to facilitate the operation of section 363(m) of the Bankruptcy Code, which provides a safe harbor for purchasers of a debtor’s property when the purchase is made in “good faith.”

17. Purchaser constitutes a good faith purchaser under section 363(m) of the Bankruptcy Code. The negotiations between the Debtor and the Purchaser were at all times conducted at arms-length and in good faith. Purchaser is not an insider or affiliate of the Debtor. Throughout the negotiations, the Debtor has acted with the intent of maximizing value. Accordingly, the Debtor respectfully requests that, if the Court approves the sale of the Premises as requested, it make a determination that the Purchaser, or the Successful Competing Bidder, is a good faith purchaser within the purview of section 363(m) of the Bankruptcy Code.

### **Sale Free and Clear of Liens**

18. Under the CMD Agreement, the sale of the Premises by the Debtor to the Purchaser is required to be free and clear of all liens, claims, and encumbrances. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” only if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

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<sup>7</sup> *In re Abbots Dairies, Inc.*, 788 F.2d 143, 149-50 (3rd Cir. 1986).

- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.<sup>8</sup>

19. PNC Bank, the holder of the senior lien encumbering the Premises, has been provided general status updates of the Debtor's sale efforts, has been provided a copy of the CMD Agreement, and consents to the proposed sale of the Premises to the Purchaser or to a Successful Competitive Bidder in accordance with the Competitive Bidding Procedures. Other than easements and restrictions of record, any other claims against the Debtor secured by a lien or other encumbrance on the Premises, if any, may be transferred to the proceeds of sale and allowed in accordance with priorities established under the Bankruptcy Code. Moreover, such sale is contemplated by the provisions of the Liquidating Plan Term Sheet agreement among the Debtor, the Unsecured Creditors' Committee and PNC approved by this Court's order entered March 8, 2001.

#### **Approval of the Sale Is Warranted**

20. "Where a debtor seeks to use or sell assets of the estate pursuant to section 363 of the Bankruptcy Code, the debtor's good faith business judgment regarding the proposed transaction should not be disturbed absent a showing that the transaction constitutes an abuse of discretion or is contrary to the interests of the creditors."<sup>9</sup> The court in *Abbots Dairies* stressed two factors that a debtor must prove in order to obtain court authorization of a sale or use of property of the

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<sup>8</sup> 11 U.S.C. § 363(f).

<sup>9</sup> See *Abbots Dairies*, 788 F.2d at 149-50; *In re Thrifty Liquors, Inc.*, 26 B.R. 26 (Bankr. D. Mass. 1982).

estate pursuant to section 363 of the Bankruptcy Code. First, the transaction must result from the exercise of the debtor's sound business judgment. As stated, the Debtor believes that sale of the Premises to the Purchaser or Successful Competing Bidder at the Auction Sale is in the best interests of the Debtor's estate and creditors. Second, the debtor must be acting in "good faith."<sup>10</sup> The Debtor submits that the proposed sale of the Premises will be in "good faith" within the purview of the *Abbots Dairies* analysis as no insider will gain an unfair advantage from the sale contemplated herein.

21. The Debtor respectfully submits that consummation of the sale of the Premises in accordance with the terms set forth in the CMD Agreement and the Competitive Bidding Procedures is in the best interests of its estate. Approval of the Motion accomplishes the statutory goal of maximizing the value of the Premises. Accordingly, consistent with section 363 of the Bankruptcy Code, the Motion is appropriate and warranted under the circumstances and in the best interests of the Debtor's estate and all parties in interest and should therefore be approved.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order (i) authorizing the Debtor to enter into and perform under the CMD Agreement, (ii) authorizing Mr. Mortellaro to execute the CMD Agreement and other ancillary documents on behalf of the Debtor, and (iii) authorizing the sale of the Premises to the Purchaser free and clear of all liens,

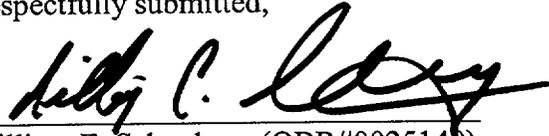
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<sup>10</sup> *Id.* at 150.

claims, and encumbrances for the Purchase Price, or to the Successful Competing Bidder that submits a higher and better bid to Purchase the Premises in accordance with the Competitive Bidding Procedures.

Dated: Cleveland, Ohio  
October 15, 2001

Respectfully submitted,

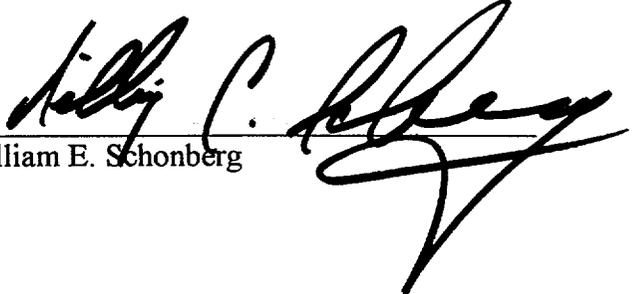


William E. Schonberg (OBR#0025140)  
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(216) 363-4500

**Counsel for Youngstown Osteopathic  
Hospital Association, Debtor and Debtor  
in Possession**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion for Order (i) Authorizing Debtor to Enter Into and Perform under Hospital Facility Real Estate Purchase Agreement and (ii) Approving the Sale of Debtor's Hospital Facility to Purchaser or Successful Competitive Bidder Free And Clear of Liens, Claims, and Encumbrances was sent by regular United States Mail to those parties listed on the attached Schedule, this 16<sup>th</sup> day of October, 2001.

  
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William E. Schonberg

## REAL ESTATE PURCHASE AGREEMENT

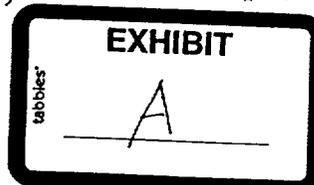
THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is dated as of October 4, 2001, between YOUNGSTOWN OSTEOPATHIC HOSPITAL ASSOCIATION, an Ohio not-for-profit association, as debtor and debtor-in-possession (the "Seller"), and CMD Realty Group, LLC (the "Purchaser").

WHEREAS, the Seller is a not-for-profit hospital association, which operated a major general hospital in Youngstown, Ohio, and debtor-in-possession in a reorganization case under Chapter 11 of Title 11 (the "Bankruptcy Code") of the United States Code pending in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division (the "Bankruptcy Court"); and

WHEREAS, the Seller is the owner of certain hereinafter described real property which the Seller desires to sell, or cause to be sold, and the Purchaser desires to buy upon the terms, conditions and provisions set forth.

NOW, THEREFORE, the parties hereto hereby agree as follows:

- The Premises. Upon the terms and subject to the conditions set forth in this agreement, the Seller agrees to sell and the Purchaser agrees to purchase, "as is" and "where is" and with no representations or warranties by the Seller except as contained in this Agreement, all of the Seller's right, title and interest in and to the real property and all related improvements, easements, hereditaments and appurtenances relating thereto commonly known as 1319 Florencedale Avenue and 83 Bissell Avenue, Youngstown, Ohio, and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Premises"), but specifically excluding (i) substantially all of the Seller's furniture, fixtures, and equipment ("FF&E") formerly in the Premises and purchased by International Asset Recovery, Inc. ("IAR") and Sealand (General Exporters) Ltd. (together with IAR the "Asset Purchasers") and (ii) specifically, FF&E listed on Exhibit "B" attached hereto and made a part hereof. Seller shall indemnify and defend Purchaser, for a period of one (1) year from the date of this Agreement, from claims of the Asset Purchasers to any personal property at the Premises as of October 4, 2001.
- Purchase Price. The purchase price which the Purchaser agrees to pay and the Seller agrees to accept as full purchase price consideration for the Premises and all personal property at the Premises as of October 4, 2001, excluding that property listed on Schedule "B", is \$ 150,000.00 ("Purchase Price"), subject to paragraph 3 below. The Purchaser shall, immediately following execution of this Agreement by the Seller, deposit Ten Thousand Dollars (\$10,000) as an earnest money deposit ("Earnest Deposit") with Kutlick Platz Realty L.L.C. ("Kutlick"), at 100 DeBartolo Place, Ste. 303, Youngstown, Ohio 44513. At the Closing of a sale to Purchaser, the Earnest Deposit shall be applied to payment of the Purchase Price. The remainder of the Purchase Price shall be paid to the Seller prior to, or at the Closing in immediately available funds.
- Bankruptcy Court Approval and Competitive Bidding. The Seller shall promptly after execution of this Agreement by the Purchaser file the appropriate motion or motions (singularly or collectively, the "Motion") with the Bankruptcy Court seeking authority for the



Seller to enter into and perform under this Agreement, for approval of the Agreement and sale of the Seller's rights, title and interest in the Premises to the Purchaser, for approval of competitive bidding procedures, and for approval of the notice of hearing(s) respecting the same (the "Notice"). The Purchaser acknowledges that:

(a) the sale of the Premises is subject to competitive bids ("Competitive Bidding") from third-parties. The Motion will seek approval of procedures for Competitive Bidding which will offer third-parties an opportunity to submit higher and better competitive bids than that of the Purchaser to purchase the Premises. The Purchaser shall have the right to match any bids received.

(b) The Seller's obligations under this Agreement are subject to entry of the Sale Order (hereinafter defined).

(c) In the case that the Bankruptcy Court does not enter the Sale Order, as described in paragraph 5(a) below, for reasons other than the Purchaser's breach of this Agreement, or the Bankruptcy Court does not enter the Sale Order because a third-party other than the Purchaser is the successful bidder in the Competitive Bidding, then in either event, the Earnest Money shall thereupon be returned to the Purchaser and the Purchaser shall have no claim against the Seller, or its bankruptcy estate.

(d) The Seller has entered into a prior agreement whereby the Seller sold all the FF&E to the Asset Purchasers, including any extensions and modifications thereto, and that the FF&E, none of which is on the Premises, other than those items listed on Exhibit "B", is not included as part of the Premises or this Agreement.

(e) Kutlick represents the interests of the Seller in this transaction. The Purchaser represents and warrants that no real estate broker or salesman has been involved in this transaction or has shown the Premises to the Purchaser, other than Kutlick. The Purchaser hereby agrees to indemnify, defend and hold the Seller harmless from and against any claim for commissions by any real estate broker or salesman claiming to have dealt with the Purchaser in this transaction. Seller shall pay the commission, ~~if any~~, due Kutlick. SAID COMMISSION WILL BE PAID TO KUTLICK AT CLOSING.

JP (C.T.)  
4. Transactions After the Closing. Any and all obligations and liabilities arising on or after the Closing related to the Purchaser's operations or use of the Premises shall be solely for the account of the Purchaser without liability of any kind to the Seller. Seller shall use reasonable efforts to assign the existing liability and casualty insurance coverage to Purchaser including an endorsement or other document of the insurer reflecting the change of ownership and making Purchaser a named insured for a reasonable period after the Closing.

#### 5. The Closing.

(a) Subject to the terms and conditions set forth in this Agreement, the closing of this transaction (the "Closing") shall take place at the office of Kutlick or a mutually agreed upon title company on the first business day immediately following the tenth day following the entry of a final non-appealable order by the Bankruptcy Court approving the sale of the Seller's right, title and interest in the Premises to the Purchaser (the "Sale Order"), provided that the Sale Order is neither stayed, vacated or otherwise rendered

ineffective as of the date of the Closing. A condition of the Closing is that the Seller be authorized by the Sale Order, in accordance with section 363(f) of the Bankruptcy Code, to sell its right, title and interest in the Premises to the Purchaser free and clear of liens, claims and encumbrances, except for taxes and assessments, general and special, which are a lien on the Premises but not yet due and payable as of the date of transfer of title; covenants, conditions, reservations and restrictions of record; zoning ordinances; and easements and rights of way, if any, but free of any voluntary matter of record to which Seller is a party first appearing of record after January 15, 2001.

(b) At the Closing, and on the condition that the Seller has received the Purchase Price, the Seller shall deliver or cause to be delivered to the Purchaser all documents and instruments necessary to transfer to the Purchaser all of the Seller's rights, title and interest in the Premises, including without limitation:

- (i) a fiduciary's deed (the "Deed"), conveying the Premises to the Purchaser in the condition required under paragraph 5(a) hereof;
- (ii) a true and accurate certified copy of the of the Sale Order; and
- (iii) such other documents as may be reasonably requested by the Purchaser, or the title insurer, in connection with the transaction contemplated hereby which do not materially increase the burdens or costs imposed upon the Seller by the other provisions of the Agreement.

(c) Possession of the Premises in its "AS IS", "WHERE IS" condition shall be delivered to the Purchaser at the Closing. The Seller is responsible for the costs of the transfer tax and conveyance fee required by law to be paid at the time of filing of the Deed. The Purchaser is responsible for all recording fees, title insurance premiums, and any costs or expenses incurred in connection with the issuance of any title insurance policy ordered by the Purchaser.

6. No Contingency. Satisfaction of the applicable provisions of paragraphs 3, 5, 8 and 9 of this Agreement are the only conditions precedent to enforceability of the Purchaser's obligation to purchase the Premises pursuant to the terms of this Agreement. Specifically, except for the provisions of paragraphs 3, 5, 8 and 9, there are no financing, inspection, environmental, governmental approval (other than Bankruptcy Court approval), title commitment or insurance or other conditions whatsoever to the Purchaser's obligation to purchase the premises as provided in this Agreement.

7. Acknowledgment. The Purchaser acknowledges that the Purchaser has inspected the Premises, that the Purchaser is relying completely on its own investigation of the Premises and all matters related thereto and that the Seller has made no warranties or representations of any kind or nature, either oral or written, directly or indirectly, express, implied, statutory or otherwise, with respect to the Premises including, without limitation, with respect to the applicability of any laws, rules or regulations concerning zoning, building, environmental, health or safety matters, and that the Purchaser is purchasing the Premises from the Seller in its "AS IS", "WHERE IS" condition. Without limiting the generality of the foregoing, the Seller makes no representations or warranties as to the presence or absence of any hazardous or toxic waste,

substance or material or pollutants or contaminants, including petroleum, petroleum-containing products and asbestos (as such terms are defined in any federal, state, or municipal law, rule or regulation).

8. Condemnation. In the event that any condemnation or eminent domain proceedings of any kind are commenced against the Premises, the Seller shall give notice to the Purchaser of any such proceedings within ten (10) days after the Seller becomes aware thereof. If prior to the Closing: (a) a material part of the Premises is taken by condemnation or eminent domain proceedings of any kind, (b) condemnation or eminent domain proceedings of any kind are instituted against a material portion of the Premises or (c) a voluntary conveyance is made by the Seller in connection with any of the foregoing, then, in any such event, the Purchaser may elect, by notice to the Seller within five (5) days after receipt of notice thereof from the Seller, to: (x) declare this Agreement null and void and receive a return of the Earnest Deposit or (y) complete the purchase of the Premises, less the portion of the Premises taken by eminent domain or condemnation or voluntarily conveyed in connection therewith and all awards or payments paid to the Seller under such proceedings or in connection therewith shall be credited against the Purchase Price or, if subsequent to the Closing, assigned to the Purchaser. If the Purchaser fails to notify the Seller of its election pursuant to the previous sentence, then the Purchaser shall be deemed to have elected the option set forth in clause (y) of this paragraph 8.

9. Damage and Destruction. If after the execution of this Agreement, and prior to the Closing, all or any part of the Premises is damaged by fire or natural elements or other causes, and which costs in excess of twenty-five percent (25%) of the Purchase Price to repair, then the Seller shall immediately notify the Purchaser of such occurrence, and either the Seller or the Purchaser may terminate this Agreement by written notice to the other within twenty (20) days after the date of such notice of such damage. If neither party elects to terminate this Agreement, then there shall be no reduction in the Purchase Price and at the Closing the Seller shall assign to the Purchaser whatever rights the Seller may have with respect to any insurance proceeds attributable to such damage and shall credit the Purchaser with the amount of any deductible under such insurance.

10. Default. If the Seller fails to perform any of the Seller's obligations under this Agreement and such failure shall continue for a period of fifteen (15) days after written notice from the Purchaser, then the Purchaser shall have all rights and remedies available at law. Irrespective of any other remedies available to the Seller, if the Purchaser fails to perform any of the Purchaser's obligations under this Agreement, then the Seller may retain the Earnest Money, as minimum stipulated damages, which shall not preclude the Seller from suing for and recovering further damages, if any.

11. Notice. Any written notification provided for herein to the Seller or the Purchaser shall be deemed to have been given when mailed postpaid by certified mail, return receipt requested, or sent by a nationally-recognized overnight courier company (provided a receipt is given therefor) as follows:

To the Seller:

Youngstown Osteopathic Hospital Association  
1319 Florencedale Avenue  
Youngstown, Ohio 44505  
Attn: Joe Mortellaro, Controller

With a copy to: Benesch, Friedlander, Coplan & Aronoff LLP  
2300 BP Tower  
200 Public Square  
Cleveland, Ohio 44114-2378  
Attn: William E. Schonberg

To the Purchaser: CMD Realty Group, LLC  
c/o William Anthony Myers  
33 Melrose Avenue  
Boardman, OH 44512

To the Official  
Committee of Unsecured  
Creditors: Nadler Nadler & Burdman CO., LPA  
20 Federal Plaza West, Suite 600  
Youngstown, Ohio 44503-1423  
Attn: Timothy M. Reardon

To PNC Bank, National  
Association: c/o Meyer, Unkovic & Scott, LLP  
1300 Oliver Building  
Pittsburgh, Pennsylvania 15222-2304  
Attn: Joel M. Helmrich

12. Miscellaneous.

(a) Each person signing this Agreement in a representative capacity warrants his or her authority to do so.

(b) The Seller hereby certifies that the Seller is not a "non-resident alien," "foreign person" or "foreign entity" within the meaning of the Internal Revenue Code of 1986, as and the regulations thereunder and the Seller agrees to provide the Purchaser on the Closing with an appropriate affidavit in the form required by the Internal Revenue Service.

(c) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and they shall not be bound by any terms, warranties or representations, oral or written, express or implied, not herein contained. This Agreement shall not be, changed or modified, except by written instrument executed by the Purchaser and the Seller. Time is of the essence for all purposes of this Agreement.

(d) This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio and the Bankruptcy Code, notwithstanding the application of any principles of conflicts of laws.

(e) This Agreement may be executed in multiple identical counterparts, all of which, when taken together, shall constitute one document.

(f) The Seller and the Purchaser hereby select and subject themselves solely to the jurisdiction of the Bankruptcy Court to resolve any and all claims, controversies, or disputes relating in any way to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth beneath their respective signatures.

Seller:

YOUNGSTOWN OSTEOPATHIC  
HOSPITAL ASSOCIATION

By: Joseph R. Mortellaro, Jr.  
Name: Joseph R. Mortellaro, Jr.  
Title: Controller

Date: October 8, 2001

William D. Kutlick  
Witness

Deborah C. Thomas  
Witness

Purchaser:

CMD REALTY GROUP, LLC

By: Christopher T. Tornello  
Name: Christopher T. Tornello  
Title: Member

Date: October 8, 2001

William Anthony Myers  
Witness

Deborah C. Thomas  
Witness

### RECEIPT & ESCROW AGREEMENT

Kutlick acknowledges receipt of the Earnest Deposit in the form of a ~~cashier's~~ <sup>H.C.T. WDK</sup> check in the amount of \$10,000.00 which Kutlick agrees to hold and deliver or return in strict accordance with the terms and subject to the conditions of the foregoing Real Estate Purchase Agreement.

KUTLICK PLATZ REALTY LLC

By: William D. Kutlick  
Name: William D. Kutlick  
Title: AGENT

Date: October 8, 2001

"Exhibit A"

PARCEL NO. 11

situated in the City of Youngstown, County of Mahoning and State of Ohio and known as being Youngstown City Lot No. 61342 according to the latest enumeration of lots in said City, in a Replat of Youngstown City Lot Nos. 10569 through 10578 inclusive; 13596 through 13601 inclusive; and 14075 through 14079 inclusive, as recorded in Volume 64 of Plats, Page 126 of Mahoning County Records, and being more particularly bounded and described as follows:

BEGINNING at a point on the south line of Bissell Avenue, said point being the northeasterly corner of Youngstown City Lot No. 17733; thence easterly along the southerly line of Bissell Avenue, a distance of 95 feet to a point on the westerly line of Bryson Street; thence southerly along the westerly line of Bryson Street, a distance of 614 feet to a point on the north line of Broadway Avenue; thence west along the north line of Broadway Avenue, a distance of 268.84 feet to a point on the east line of Florencedale Avenue; thence north along the east line of Florencedale Avenue, a distance of 414 feet but to the southwest corner of Lot No. 10568; thence east along the south line of Lot No. 10568, a distance of 134.42 feet to the southeast corner of Lot No. 10568; thence north along the easterly line of Lot Nos. 10568 and 10567, a distance of 85 feet but to the southeasterly corner of Lot No. 10566; thence east along the south line of Lot No. 17733,

\*\*\* Continued on Exhibit "A" attached hereto and made a part hereof \*\*\*

EXHIBIT A

a distance of 39.42 feet to the southeasterly corner thereof; thence north along the east line of Lot No. 17733, a distance of 85 feet to the place of beginning, be the same more or less.

PARCEL NO. 2:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 10565, 10566, 10567 and 10568 according to the latest enumeration of lots in said City, in Cynthia D. Bissell's First Addition to Windamere Plat, a subdivision of a part of Original Youngstown City Out Lot 244, as shown by the recorded Plat of said Subdivision in Volume 7 of Plats, Page 57, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 170 feet on the easterly side of Florencedale Avenue, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 170 feet, as appears by said plat.

PARCEL NO. 3:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot No. 17733 according to the latest enumeration of lots in said City, in a replat of Youngstown City Lot Nos. 14075 & 14076, as shown by the recorded plat of said Subdivision in Volume 12 of Plats, Page 223, of Mahoning County Records.

Said City Lot No. 17733 has a frontage of 39.42 feet on the southerly side of Bissell Avenue, and extends back 85 feet on the easterly line, 85 feet on the westerly line and has a rear line of 39.42 feet, as appears by said plat.

PARCEL NO. 4:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 13602 through 13607 inclusive, according to the latest enumeration of lots in said City, in Executors of Cynthia D. Bissell's Second Addition to Windamere, a Subdivision of a part of Original Youngstown City Out Lot 236, as shown by the recorded plat of said Subdivision in Volume 8 of Plats, Page 210, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 249 feet on the easterly side of Bryson Street, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 249 feet, as appears by said plat.

PARCEL NO. 5:

Situated in the City of Youngstown, County of Mahoning and State of Ohio and known as being Youngstown City Lot Nos. 13608, 13609 and 13675 according to the latest enumeration of lots in said City, in Replat of Youngstown City Lot Nos. 13608 and 13609, as shown by the recorded plat of said Subdivision in Volume 15 of Plats, Page 58, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 90 feet on the northerly side of Broadway Avenue, and extends back 150 feet on the easterly line, 150 feet on the westerly line, which is also the easterly line of Bryson Street, and having a rear line of 90 feet, as appears by said plat.

\*\*\* Continued on Exhibit "A" attached hereto and made a part hereof \*\*\*

EXHIBIT A

PARCEL NO. 6:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 13610 according to the latest enumeration of lots in said City, in Executors of Cynthia D. Bissell's Second Addition to Windamere, a Subdivision of a part of Original Youngstown City Out Lot 236, as shown by the recorded plat of said Subdivision in Volume 8 of Plats, Page 210, of Mahoning County Records. Said City Lot has a frontage of 44.42 feet on the northerly line of Broadway Avenue, and extends back 150 feet on the easterly line, 150 feet on the westerly line and has a rear line of 44.42 feet, as appears by said plat.

PARCEL NO. 7:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 14276, 14277 and 28815, according to the latest enumeration of lots in said City, in Replat of Youngstown City Lot Nos. 14276 and 14277, as shown by the recorded plat of said Subdivision in Volume 16 of Plats, Page 47, of Mahoning County Records.

Said City Lots together form a parcel having a frontage of 90 feet on the northerly side of Broadway Avenue, and extends back 150 feet on the easterly line, which is also the westerly side of Kensington Avenue, 150 feet on the westerly line and having a rear line of 90 feet, as appears by said plat.

PARCEL NO. 8:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot No. 14275 according to the latest enumeration of lots in said City, in Windamere Allotment, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 163, of Mahoning County Records.

Said City Lot No. 14275 has a frontage of 44.42 feet on the northerly side of Broadway Avenue, and extends back 150 feet on the easterly line, 150 feet on the westerly line and has a rear line of 44.42 feet, as appears by said plat.

PARCEL NO. 9:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 15302, 15303, 15304 and 15305 according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 15, of Mahoning County Records.

Said City Lot Nos. 15302, 15303, 15304 and 15305 together form a parcel having a frontage of 164 feet on the westerly side of Kensington Avenue, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 164 feet, as appears by said plat.

PARCEL NO. 10:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 15306, 15309 and 15310, according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 163, of Mahoning County Records.

\*\*\* Continued on Exhibit "A" attached hereto and made a part hereof \*\*\*

EXHIBIT A

Said City Lot Nos. 15308, 15309 and 15310 together form a parcel having a frontage of 125 feet on the westerly side of Kensington Avenue, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 125 feet, as appears by said plat.

PARCEL NO. 11:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Nos. 15315, 15316 and 15317 according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 10 of Plats, Page 163, of Mahoning County Records.

Said City Lot Nos. 15315, 15316 and 15317 together form a parcel having a frontage of 130 feet on the easterly side of Bryson Street, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and having a combined rear line of 130 feet, as appears by said plat.

PARCEL NO. 12:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot No. 15314 according to the latest enumeration of lots in said City, in Replat of Youngstown City Lot Nos. 15311, 15312, 15313 and 15314 as shown by the recorded plat of said Subdivision in Volume 12 of Plats, Page 151, of Mahoning County Records.

Said City Lot No. 15314 has a frontage of 38.41 feet on the southerly side of Bissell Avenue, and extends back 85 feet on the easterly line, 85 feet on the westerly line, which is also the easterly line of Florencedale Avenue, and has a rear line of 38.41 feet, as appears by said plat.

PARCEL NO. 13:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being the southerly 40' of Youngstown City Lot No. 12390 according to the latest enumeration of lots in said City, as shown by the recorded plat of said Subdivision in Volume 8 of Plats, Page 143, of Mahoning County Records.

Said southerly 40' of Youngstown City Lot No. 12390 has a frontage of 40 feet on the westerly side of Bryson Street, and extends back 134' 5" on the northerly line, 134' 5" on the southerly line and has a rear line of 40 feet, as appears by said plat.

PARCEL NO. 14:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being the north four (4) feet of Youngstown City Lot No. 10556 and the south thirty-six (36) feet of Youngstown City Lot No. 10557 according to the latest enumeration of lots in said City, as recorded in Volume 7 of Plats, Page 57, Mahoning County Records.

Said lots together have a frontage of Forty (40) feet on the west line of Florencedale Avenue and extends back on its north line One Hundred-Thirty-four Feet and Five Inches (134' 5") and on its south line One Hundred Thirty-four Feet and Five Inches (134' 5"), having a combined rear line of Forty (40) feet, as appears by said plat.

\*\*\* Continued on Exhibit "A" attached hereto and made a part hereof \*\*\*

EXHIBIT A

PARCEL NO. 15:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and being known as the southerly 40 feet from front to rear of Youngstown City Lot Number 10556, according to the latest enumeration of lots in said City in Cynthia D. Bissell's First Addition to Windamere Plat, a subdivision of a part of Youngstown Township Great Lot Number 42 and part of Youngstown City Out Lot Number 236, as shown by the recorded plat of said subdivision in Volume 7 of Plats, Page 57, Mahoning County Records.

Said southerly 40 feet of Youngstown City Lot Number 10556 has a frontage of 40 feet on the westerly line of Florencedale Avenue and extends back therefrom, a distance of 134 feet 5 inches on its northerly line, 135 feet 5 inches on its southerly line, and has a rear line of 40 feet, as appears by said plat.

PARCEL NO. 16:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being the north nine (9) feet from front to rear of Youngstown City Lot Number Ten Thousand Five Hundred Fifty-eight (10558) and the south thirty-five (35) feet from front to rear of Lot Number Ten Thousand Five Hundred Fifty-nine (10559) according to the latest enumeration of lots in said City, as recorded in Volume 7 of Plats, Page 57, Mahoning County Records.

Said parts of said lots have a combined frontage of Forty-four (44) feet on the west line of Florencedale Avenue and extends back on its north line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, and on its south line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, having a combined rear line of Forty-four (44) feet, as appears by said plat.

PARCEL NO. 17:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Youngstown City Lot Number Fifteen Thousand Three Hundred Seven (15307) according to the latest enumeration of lots in said City.

Said lot has a frontage of Forty (40) feet on the west line of Kensington Avenue, and extends back on its south line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, and on its north line One Hundred Thirty-four and Forty-two Hundredths (134.42) feet, having a rear line of Forty (40) feet.

PARCEL NO. 18:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Lot No. 15306 according to the latest enumeration of lots in said city, as recorded in Volume 10 of Plats, Page 163, Mahoning County Records.

Said lot has a frontage of 45 feet on the westerly line of Kensington Avenue and extends back on its northerly line 134.5 feet, and on its southerly line 134.5 feet, having a rear line of 45 feet, as appears by said plat.

\*\*\* Continued on Exhibit "A" attached hereto and made a part hereof \*\*\*

EXHIBIT A

PARCEL NO. 19:

Situated in the City of Youngstown, County of Mahoning, and State of Ohio, and known as being Youngstown City Lot No. 56737 according to the latest enumeration of lots in said City, formerly part of Youngstown City Lot Numbers 10563 and 10564 in the Bissell Realty Company Replat, a subdivision of a part of Original Youngstown City Great Lot No. 42 as shown by the recorded plat of said subdivision in Volume 30 of Plats, Page 53, of Mahoning County Records.

Said Youngstown City Lot Number 56737 has a frontage of 85 feet on the westerly side of Florscedale Avenue and extends back between parallel lines 83.14 feet on the northerly line, 83.14 feet on the southerly line, and has a rear line of 85 feet, as appears by said plat.

PARCEL NO. 20:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Lot No. 16551 according to the latest enumeration of lots in said City, as recorded in Volume 12 of Plats, Page 151, Mahoning County Records.

Said lot has a frontage of 38.4 feet on the southerly line of Bissell Avenue and extends back on its easterly line 85 feet, and on its westerly line 85 feet, having a rear line of 38.4 feet, as appears by said plat.

PARCEL NO. 21:

Situated in the City of Youngstown, County of Mahoning, State of Ohio, and known as being Lot Number Sixteen Thousand Five Hundred Fifty (16550) according to the latest enumeration of lots in said City, as recorded in Volume 12 of Plats, Page 151, Mahoning County Records.

Said lot has a frontage of Thirty-eight and Four Tenths (38.4) feet on the south line of Bissell Avenue and extends back on its east line Eighty-five (85) feet, and on its west line Eighty-five (85) feet, having a rear line of Thirty-eight and Four Tenths (38.4) feet, as appears by said plat.

PARCEL NO. 22:

Situated in the City of Youngstown, County of Mahoning and State of Ohio, and known as being Youngstown City Lot Number 15313 according to the latest enumeration of lots in said City.

Said Lot Number 15313 has a frontage of 38.14 feet on the south line of Bissell Avenue and extends back between parallel lines a distance of 85 feet.

**Youngstown Osteopathic Hospital  
Exclusions to the Sale of the YOH facility**

**Leased Items**

**Description**

CX4CE w/components  
Complete transcription system with phones and computers  
Telemetry system. Includes towers, monitors and receivers  
IV Pumps (47)  
Copier  
Trash Compactor

**Vendor**

Beckman-Coulter  
Dictaphone  
Hewlett Packard  
Abbott Laboratories  
Crosby Mook Office Equipment  
Browning Ferris Industries

**Other Items**

Computers  
Medical Records\*  
YOH Financial Records  
Filing Cabinets  
YOH Employee personal belongings  
GBC Shredmaster

\* Medical records include not only "paper" files but microfilm, xrays, specimen slides and wax blocks.

**EXHIBIT "B"**

Office of the United States Trustee  
BP America Building  
20<sup>th</sup> Floor, Suite 3300  
Cleveland, OH 44114

Kutlick Platz Realty, LLC  
Attention: William Kutlick  
75 Bev Road, Suite 1  
Boardman, OH 44512

Timothy Reardon, Esq.  
Nadler, Nadler & Burdman Co., LPA  
20 Federal Plaza West  
Suite 600  
Youngstown, OH 44503

William Anthony Myers, Esq.  
33 Melrose Avenue  
Boardman, OH 44512

Joel M. Helmrich, Esq.  
Meyer, Unkovic & Scott LLP  
1300 Oliver Building  
Pittsburgh, PA 15222-2304

Mahoning, County of  
50 Westchester Drive, #202  
Youngstown, OH 44515

Mahoning, County of  
Prosecutor's Office  
120 Market Street  
Youngstown, OH 44503

Mahoning, County of  
Treasurer's Office  
120 Market Street  
Youngstown, OH 44503

National City Bank  
20 Federal Plaza  
Youngstown, OH 44503

National City Bank  
One Cascade Plaza  
Akron, OH 44308

National City Bank  
Attn: Donald A. Cmar  
Special Assets Department  
P.O. Box 658  
Youngstown, OH 44501

National City Bank-Bond Trustee  
Attn: Catherine Frug, Administrator  
101 West Washington Street  
Suite 655 South  
Indianapolis, IN 46255

Ohio Bureau of Employment Services  
Attn: Jill A. Whitworth, Esq.,  
Assistant Attorney General  
Revenue Recovery Section  
101 E. Town Street, Second Floor  
Columbus, OH 43215  
Youngstown, City of  
City Planning Commission and Board of  
Zoning Appeals  
26 South Phelps Street  
City Hall  
Youngstown, OH 44503

PNC Bank, National Association  
PNC Capital Recovery Corp.  
Attn: Martin E. Mueller, Vice President  
249 Fifth Avenue-18th Floor  
Pittsburgh, PA 15222-2707  
Youngstown Osteopathic Hospital Assoc.  
Attn: Joseph R. Mortellaro Jr.  
1319 Florencedale Avenue  
Youngstown, OH 44505

United States of America  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Attn: Stuart A. Treby, Esq., Asst. General  
Counsel for Rulemaking & Fuel Cycle  
Washington, D.C. 20555-0001