



TOPIC: University of Maryland, Baltimore: Modification to Board of Regents Approval to Create a Ground Lease on 100 N. Eutaw St., 410-412 W. Fayette St., 414-418 W. Fayette St., and 405 Marion St., Baltimore, MD in order to Authorize Sale of Properties and/or Create Two Separate Ground Leases

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: September 29, 2015

SUMMARY: The University is returning to the Board to seek a modification of its prior authorization regarding the subject properties.

I. Prior Approval:

At its February 13, 2015 meeting, the Board of Regents approved the creation of a single ground lease for the development of the four University-owned properties listed above, which are located adjacent to the campus. A copy of the original approval is included as Attachment A.

The consolidated project was comprised of: (1) the former Drovers & Mechanics National Bank Building located at 100 N. Eutaw St., which consists of 10,323 SF (0.237 acres) (the "Drovers Parcel"); and (2) the former Sons of Italy Building located at 410-412 W. Fayette St., 414-418 W. Fayette St. (surface parking lot), and 405 Marion St. (vacant lot), which collectively consists of 24,594 SF (0.583 acres) (the "SOI Parcel"). The subject properties are depicted on Attachment B.

The tenant under the original approval was to be an affiliate of the Developer, Focus Development, LLC and Kinsley Equities III, L.P. The ground lease was to be for a 75-year term with an annual ground lease payment of \$90,000 (subject to an annual escalation). The ground lease was also to provide the tenant with an option to purchase the project for \$3,000,000, subject to an annual escalation. The purchase option was to have commenced on the third anniversary of substantial completion, and was to have remained in effect for 5 years after substantial completion.

II. Reason for Modification:

A key component of the project development is the proposed renovation of the Drovers & Mechanics National Bank Building, which the developer expects to finance in part with federal historic tax credits. However, the National Park Service (which administers and regulates the historic tax credit program) requires that the building be physically developed and legally separate from the adjacent properties in order to be eligible for these federal historic tax credits. Therefore, the original concept plan that envisioned a consolidated project subject to a single ground lease is no longer workable, and it is necessary to restructure the project, the financing, and the legal documentation. Because these proposed changes are substantial, Board of Regents approval is necessary for the modified deal.

III. Requested Modification:

In order to achieve the development of the properties as previously approved by the Board of Regents, the University seeks approval to alternatively (1) permit the Developer and/or the ground tenants to purchase the parcels on an accelerated basis, and/or (2) divide the project into two separate 75-year ground leases, for the Drovers Parcel and the SOI Parcel respectively.

Under the proposed modification, the Developer will remain unchanged and the proposed ground tenants (although different for each ground lease) will be affiliates of the Developer. The Developer continues to propose rental housing and related amenities, compatible retail and office uses, and parking.

Requested modifications to the project previously approved by the Board or Regents include:

- Authorize the properties to be sold (in lieu of entering into ground leases), subject to the requirement that the development of the project be substantially completed after the sale. Development control would be maintained by the University with the execution and recordation of a land disposition agreement or similar agreement. If the properties are sold, the purchase price would be a total of \$3,000,000 (the same amount previously approved by the Board of Regents), allocated between the two parcels (25% to the Drovers Parcel and 75% to the SOI Parcel). The purchase would be subject to certain State of Maryland review processes and Board of Public Works approval.
- If ground leased, the tenants would have mutually exclusive options to purchase the properties subject to each lease. The original approved purchase price of \$3,000,000, subject to annual escalations, would be allocated between the two parcels (25% to the Drovers Parcel and 75% to the SOI Parcel).
- If ground leased, the options to purchase the properties would be exercisable upon substantial completion of the project (rather than 3 years thereafter, as previously approved by the Board of Public Works).
- If ground leased, the combined annual ground rent would continue to be \$90,000 (as previously approved by the Board of Regents). The annual ground rent would be allocated between the two parcels (25% to the Drovers Parcel and 75% to the SOI Parcel).
- The Developer is now proposing a partial or complete demolition of the former Sons of Italy Building. The Developer will be required to obtain necessary approvals from the Maryland Historic Trust, as well as other required permits and licenses prior to the start of development.
- Project financing may include Low Income Housing Tax Credits for the Drovers Parcel.

Other key items that were previously approved by the Board of Regents remain unchanged.

DEVELOPER: Affiliates of Focus Development, LLC and Kinsley Equities III, L.P.

ALTERNATIVE(S): One alternative to the proposed modifications is to continue to require that one ground lease be established, thus eliminating the Developer's ability to secure federal historic tax credits. It is anticipated that the Developer will be unable to proceed in this event. This would prevent the Developer from developing the properties, and would result in their continuing deterioration. The University believes this proposal represents a quality development opportunity that will benefit both the University and the community and may not present itself again. A second alternative is to delay the time period in which the Developer and/or the ground tenants acquire the parcels.

FISCAL IMPACT: If the properties are sold in lieu of leasing, the University will receive \$3,000,000. If ground leased, the University will receive: (1) annual ground rent of \$90,000 to commence upon certificate of occupancy (with increases in accordance with CPI after the 5th year); and (2) if the Developer exercises option(s) to purchase after substantial completion, \$750,000 for the Drivers Parcel and/or \$2,250,000 for the SOI Parcel (subject to escalation of 2% per annum after 5 years). Additionally, the University will be relieved of the annual expenses for maintaining and stabilizing the buildings. Certain individuals and an affiliate of the Developer will personally guarantee that the project will be constructed and completed, thus eliminating any potential fiscal impact to the University that would have resulted from an uncompleted project.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the modification of the previously approved Board item to authorize (1) selling the properties, and/or (2) entering into two ground leases as described above; and delegate to the Chancellor the authority to execute all required documentation, including any which may be required by specific financing secured by the developer after appropriate legal review and consistent with the University System of Maryland Policy and Procedures on the Acquisition and Disposition of Real Property. The University shall continue to work with the University System of Maryland Office of the Vice Chancellor for Administration and Finance and the Office of the Attorney General throughout the sale or ground lease development processes.

COMMITTEE RECOMMENDATION: RECOMMEND APPROVAL

DATE: 9/29/15

BOARD ACTION:

DATE:

SUBMITTED BY: Joseph F. Vivona (301) 445-1923

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: University of Maryland, Baltimore: Creation of Ground Lease on 100 N. Eutaw Street, 410 - 412 W. Fayette Street, 414- 418 W. Fayette Street and 405 Marion Street, Baltimore, Maryland

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: January 29, 2015

SUMMARY: The University of Maryland, Baltimore seeks approval to enter into a 75-year ground lease with an affiliate of Focus Development, LLC and Kinsley Equities III, L.P. (Developer) for the development of four University-owned properties located at 100 N. Eutaw St. (former Drovers & Mechanics National Bank Building), 410 - 412 W. Fayette St., (former Sons of Italy Building) 414- 418 W. Fayette St. (surface parking lot) and 405 Marion St. (vacant lot) in Baltimore City. (Attachment A)

The development site totals 35,615 SF (0.82 acres) and includes two historic structures and two surface lots. The site is on the edge of the campus in Baltimore's Westside neighborhood that is undergoing redevelopment. The two historic buildings are unoccupied and are not suitable for University uses without costly renovation. The larger of the two surface lots is currently used for University staff parking. The University president has been working with the Mayor of Baltimore City over the last two and a half years on the redevelopment of the City's Westside. The proposed development of this University property will improve almost an entire city block in the Westside and enhance the campus.

The Developer proposes rental housing and related amenities, compatible retail and office uses and parking. The ground lease will state prohibited uses such as adult entertainment, gambling, the sale of alcoholic beverages except in connection with the operation of a restaurant with table service or any other use that is not consistent with the University's mission. The Developer will be required to obtain necessary approvals from the Maryland Historic Trust as well as other required permits and licenses prior to the start of development. Construction will commence within 18 months of the lease's execution and be substantially complete within 36 months of the lease execution.

The negotiated term sheet provides the Developer with a purchase option by the Developer for the underlying fee interest in the property for \$3,000,000, subject to annual escalation of 2%, which shall commence on the third anniversary of substantial completion. The option will remain in effect for five years after substantial completion. Two appraisals have placed the current value of the properties at between \$2,870,000 (Jones Realty Advisors) and \$2,061,000 (Valbridge Property Advisors). The purchase will be subject to certain State of Maryland review processes and Board of Public Works approval.

Other key items included in the term sheet are: an annual ground rent of \$90,000 with annual escalations commencing the third year after substantial completion; the transaction must be structured in a manner that does not create debt or financial obligation for the University System of Maryland or the State of Maryland; a guarantee of construction completion; construction financing will have a maximum Loan to Value ratio of 75% and include EB-5 program funds; prior to commencing construction tenant must provide evidence of sufficient readily available funds to complete construction. University approval will be required for any material changes to proposed uses, site design, building massing, building and parking garage placement, and other exterior features; approval by Maryland Historical Trust; and compliance with WBE/MBE goals.

DEVELOPER: Affiliate of Focus Development, LLC and Kinsley Equities III, L.P.

ALTERNATIVE(S): Nine years ago the University attempted to enter into a similar development agreement that did not reach fruition. During the interim, the property has remained unusable and continues to deteriorate. The only alternative to the proposed improvements to these deteriorated properties is to allow them to continue to deteriorate. The University believes this proposal represents a quality development opportunity that will benefit both the University and the community.

FISCAL IMPACT: The University will realize an annual ground rent of \$90,000 to commence upon certificate of occupancy but no later than 42 months after execution of the ground lease. Commencing on the fifth year after the lease is executed, the annual rent will increase each year based on increases in the CPI index – all urban consumers for Washington-Baltimore DC-MD-VA-WV. Additionally, the University will avoid the annual expenses associated with maintaining and stabilizing the buildings.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the terms of the negotiated term sheet, including the option for the developer to purchase the underlying interest in the property after substantial completion of the construction for the University properties located at 100 N. Eutaw Street, 410 - 412 W. Fayette Street, 414- 418 W. Fayette Street and 405 Marion Street in Baltimore City; and, delegate to the Chancellor the authority to execute, after appropriate legal review, all documentation required to establish a 75-year ground lease as described above, consistent with the University System of Maryland Policy and Procedures on the Acquisition and Disposition of Real Property. The University shall continue to work with the University System of Maryland Office of the Vice Chancellor for Administration and Finance and the Office of the Attorney General throughout the ground lease development processes. If there are any substantial changes to the negotiated ground lease terms as the document is being developed, UMB shall return to the Board of Regents to approve those changes.

COMMITTEE RECOMMENDATION: RECOMMEND APPROVAL

DATE: 1/29/15

BOARD ACTION: APPROVED

DATE: 2/13/15

SUBMITTED BY: Joseph F. Vivona (301) 445-1923
