



ARLINGTON COUNTY, VIRGINIA

<p style="text-align: center;">County Board Agenda Item Meeting of February 21, 2009</p>

DATE: February 20, 2009

SUBJECT: Approval of Deed(s) of Ground Lease between the County Board of Arlington County, Virginia, as Landlord, and Telesis Corporation and National Housing Trust-Enterprise Preservation Corporation or their designee(s), as Tenant(s), on real property which the County Board is the contract purchaser known as Buckingham Village 3, Arlington, Virginia, contingent upon the County purchasing the property (RPC No. 20023002).

C. M. RECOMMENDATIONS:

1. Approve the attached Deed of Ground Lease between the County Board of Arlington County, Virginia (“County”), as Landlord, and Telesis Corporation (“Telesis”) and National Housing Trust-Enterprise Preservation Corporation (“NHTPC”) or their designee(s), as Tenant(s), on real property which the County Board is the contract purchaser, known as Buckingham Village 3, Arlington, Virginia, contingent upon the County purchasing the property (RPC No. 20023002).
2. Authorize the Real Estate Bureau Chief, or his designee, to execute the Deed of Ground Lease and all related documents, on behalf of the County Board, subject to approval as to form by the County Attorney.
3. Authorize the County Manager to execute any documents required to accommodate Tenant’s financing of renovations to the property, subject to the terms and conditions of the Deed of Ground Lease, if deemed necessary to increase the amount of tax credits available for the property, subject to approval as to form by the County Attorney.

ISSUE: As part of the acquisition and redevelopment of real property which the County Board is contract purchaser, the County Board is being requested to approve and authorize the execution of the attached Deed of Ground Lease.

<p>County Manager: _____</p>

<p>County Attorney: _____</p>

<p>Staff: Betsy Herbst/Lynne Porfiri, DES Real Estate Bureau</p>
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<p>Report Date: 2/23/2009</p>

SUMMARY: County Board approval and execution of the attached Deed of Ground Lease (the “Ground Lease”) is necessary for Telesis and NHTPC, or their related designee(s) (the “Tenant”), to establish the requisite site control of the property to allow Tenant to submit an application(s) to the Virginia Housing and Development Authority (“VHDA”) for affordable housing tax credits and to apply for federal and state historic tax credits, to be used to help finance the affordable housing component of the proposed renovations, and to operate the property as affordable housing subsequent to the County’s acquisition.

BACKGROUND: Buckingham Village 3 is located in the 300 block of N. George Mason Drive, Arlington, Virginia, RPC #20023002 (see Attachment 1, Vicinity Map), presently improved with sixteen (16) residential apartment buildings, containing approximately one hundred forty (140) residential units (the land and improvements are jointly referred to as the “Property”). On June 9, 2007, the County Board approved an Agreement of Sale providing for the acquisition of Buckingham Village 3 and adopted a resolution approving funding for the acquisition. Thereafter, on June 21, 2007, the County Board, as purchaser, entered into the Agreement of Sale with 4319 Pershing Drive Apartments Investors, as Seller, for the purchase of Buckingham Village 3 (the “Purchase Agreement”), that provided for closing of the purchase to occur on or before March 20, 2009. The Purchase Agreement was subsequently assigned by 4319 Pershing Drive Apartments Investors to its related entity, Buckingham Historic Apartments LLC, as assignee of Seller, effective February 2, 2009.

The County issued a Request for Proposals (“RFP”) from developers for the redevelopment of the Property, including the design, permitting, renovation and financing for the affordable dwelling units to be located on the Property. In January 2008, Tenant responded to the RFP and the County selected Tenant to redevelop the Property. The County issued a letter of intent on August 1, 2008, providing that Tenant would refine and determine the specific elements of the affordable housing program (“Affordable Housing Program”), the renovation and construction plan, and the financing plan for the project related to the redevelopment of the Property, as approved by the County.

Consistent with the general plan approved by the County Board on June 9, 2007 for a public-private partnership for acquisition and renovation of the Property, the Tenant has proposed to ground lease the Property from the County in order to renovate and redevelop the residential apartment buildings for operation of the Affordable Housing Program to include approximately 140 affordable residential dwelling units (together the “Project”).

DISCUSSION: The Agreement of Sale provides that settlement for the acquisition of the Property shall occur no later than March 20, 2009, unless otherwise provided under the terms of the Agreement of Sale. The closing for the County’s acquisition of the Property is scheduled to occur on March 19, 2009. At closing, SunTrust Bank will provide the financing for the County’s purchase of the Property. A financing plan was approved by the County Board on June 9, 2007; however, as the result of current market conditions, the financing terms have changed. The revised financing terms for the acquisition are the subject of a separate Board Report.

Upon acquisition of the Property by the County, the Ground Lease will commence allowing Tenant to operate and control the existing residential rental units. It is necessary for the Tenant

to establish site control of the Property, as an entity that can operate and manage the residential dwelling units on an ongoing basis, and to enable Tenant to apply to the Virginia Housing and Development Authority (“VHDA”) for affordable housing tax credits and to apply for federal and state historic tax credits that will be used to help finance the renovation of the affordable dwelling units of the proposed Project. The Ground Lease also enables Telesis and NHTPC or their designee to continue to operate the Property as market rate affordable housing upon County acquisition. Telesis and NHTPC have indicated that their designee as Tenant is Buckingham Village, LLC, the sole member of which is Neighborhood Associates Corporation, a tax exempt, District of Columbia non-profit corporation.

Upon obtaining appropriate financing, the Ground Lease will permit the Tenant to renovate the Property consistent with final renovation plans for the Project which will be subject to approval by the County, as landlord (“Landlord”). Following renovation of the buildings, the improvements will be operated and managed by Tenant as affordable dwelling units, so as to qualify for low-income housing tax credits under the Internal Revenue Code of 1986, as amended.

Under the terms of the proposed Ground Lease, the County would ground lease the Property to the Tenant for a term of 75 years, with an option by Tenant to extend the term for an additional five (5) years. The proposed Ground Lease includes the following terms:

- (a) The parties to the Ground Lease shall be the County Board, as Landlord, and Buckingham Village, LLC, a Delaware limited liability company (“Tenant”), the sole member of which is Neighborhood Associates Corporation, a tax-exempt, District of Columbia non-profit corporation.
- (b) The term of the Ground Lease shall (i) commence on the date that Landlord becomes the fee simple owner of the Property, which is currently scheduled to occur on March 19, 2009 (the “Commencement Date”); and (ii) expire on the 75th anniversary of the first full calendar month following the Commencement Date, unless otherwise modified under the terms of the Ground Lease (the “Expiration Date”).
- (c) So long as Tenant is not in default of any term or condition of the Ground Lease, Tenant shall have the option to extend the term by five (5) years, if Tenant provides Landlord with written notice of Tenant’s desire to extend the term at least eighteen (18) months prior to the original Expiration Date.
- (d) Tenant shall pay rent under the Ground Lease for the term as follows:
 - (1) Tenant shall prepay to Landlord an initial installment of base rent in the amount of \$1,000,000 (“Initial Base Rent Installment”) on the date on which the construction mortgage is recorded encumbering the premises and the improvements;
 - (2) If the Tenant has not paid the \$1,000,000 Initial Base Rent Installment by June 30, 2010, then the Tenant shall pay 50 percent of the net cash flow from the Property on a quarterly basis until such Initial Base Rent Installment payment has

been made to the Landlord. The Tenant shall make the 50 percent net cash payments on July 1, 2010; October 1, 2010; January 1, 2011; April 1, 2011; and quarterly thereafter until the Initial Base Rent Installment has been made to the Landlord;

- (3) Tenant shall pay a second installment of base rent in the amount of \$12,500,000 (“Second Installment”) on the later of the date on which substantial completion has occurred for all residential dwelling units or the date on which the construction mortgage has been repaid and the document securing permanent financing has been recorded;
 - (4) Up to \$6,250,000 of the Second Installment may be deferred and paid from Tenant cash flow in subsequent years, provided, however, the Second Installment shall be paid to the Landlord no later than August 31, 2015;
 - (5) Commencing upon substantial completion of the renovations and continuing throughout the Term, the Tenant shall pay per annum additional installments of base rent in an amount equal to 50 percent of Tenant cash flow remaining after deducting reasonable and customary costs and expenses of the Tenant in connection with the Tenant’s management and operations consistent with the terms and conditions in the Ground Lease. Such annual payments will be made within ninety (90) days of the close of the Tenant’s fiscal year.
- (e) The Ground Lease provides that any fee mortgage that may affect the Property, or any portion thereof, and all subsequent modifications, shall be subject to the Ground Lease.
 - (f) Tenant shall proceed with the design, renovation and management of the Project in accordance with a plan, attached to the Ground Lease as Exhibit C, which is subject to approval by the Landlord (“Renovation, Finance and Management Plan”).
 - (g) The Ground Lease provides that the County owns fee simple title to the land comprising the Property and that, at the expiration or earlier termination of the Ground Lease, all improvements, repairs, alterations or other property attached or installed as a fixture by Tenant shall become part of the improvements (“Improvements”) and shall remain with the Property.
 - (h) Tenant shall be considered to be the owner of the Improvements on the land, subject to the terms of the Lease.
 - (i) The Ground Lease will allow Tenant to encumber its leasehold interest in the Property or the Improvements to secure certain permitted loans deemed necessary or desirable by Tenant with institutional lenders which, after the completion of construction, will not, subject to the affordability covenants, exceed an aggregate maximum loan to value ratio as of the date of the financing of 80 eighty percent. The Tenant shall not otherwise, without prior written consent of the Landlord, encumber the leasehold estate or the improvements.

- (j) The County, as Landlord, shall provide notice of any defaults by Tenant under the Ground Lease to Tenant, all investor limited partners as designated by Tenant and all permitted mortgagees (if required), and allow any such parties the right to cure a default by Tenant under the Ground Lease.
- (k) The Ground Lease provides that the Tenant shall not assign the Lease or any of its rights under the Lease as to all or any portion of the premises or the improvements or make or permit any voluntary or involuntary total or partial sale, lease, sublease, assignment, conveyance or encumbrance or other transfer of part of the premises or the improvements, or its occupancy or use without first obtaining Landlord's express written consent.
- (l) Tenant may have the ability to develop part of the Property as affordable, for-sale housing, consistent with the Affordable Housing Program, attached to the Ground Lease as Exhibit E, subject to the County and Tenant reaching an agreement on the applicable terms and conditions, which would be reflected by an amendment to the Ground Lease subject to approval by the County Board.
- (m) Landlord shall have the right to terminate the Ground Lease for any or no reason at Landlord's sole and absolute discretion by providing notice to Tenant exercising the termination right at any time on or before the earlier to occur of (i) February 1, 2010, or (ii) the day prior to the date upon which Tenant closes on its construction mortgage; provided, however, a closing on Tenant's construction mortgage prior to February 1, 2010 shall only serve to reduce the deadline for Landlord to exercise its right to terminate the Ground Lease if Tenant shall have provided Landlord with written notice of such closing date at least forty-five (45) days prior to such closing date. In the event that Landlord exercises the termination right provided for in the Ground Lease, Landlord shall, so long as Tenant complies with all of its obligations under the Ground Lease, pay Tenant a termination fee equal to (A) the reasonable out-of-pocket expenses that Tenant actually incurred with third-parties in connection with the Ground Lease and the pre-development of the Project (collectively, the "Pre-Development Expenses"), plus (B) a fee to Tenant equal to Nine Hundred Eighty-five Thousand and ^{No}/₁₀₀ Dollars (\$985,000.00) (collectively with the Pre-Development Expenses, the "Termination Fee").

It is possible that VHDA, other tax credit issuers or investors may require changes to the Ground Lease. In addition, it is possible that ultimately the Board will be asked to divide this Ground Lease into two separate ground leases covering different portions of the leased property in order to maximize the tax credits or to enable the sale of for-sale units. These changes could require the Tenant to restructure the renovation financing plan, which is the basis for the request that the County Board authorize the County Manager to execute required documents, if deemed necessary to maximize the tax credits available for the Property.

FISCAL IMPACT: The Tenant will make at least two base rent installment payments totaling \$13.5 million no later than substantial completion of the Project or when permanent financing for the Project has been recorded, as described in more detail under "Discussion" above. (Up to \$6.250 million of the Second Installment may be deferred until no later than August 31, 2015

and paid from cash flow.) In addition, the Tenant will pay 50 percent of net cash flow on an annual basis after substantial completion of the Project.

Rent payments will be used to prepay the debt the County will incur to acquire the Buckingham Village 3 parcel from Buckingham Historic Apartments LLC. The purchase price of \$34.5 million will be financed through a credit facility with SunTrust which is the subject of a separate Board report.

Rent payments will not be sufficient to cover all of the debt the County will incur to acquire Buckingham Village 3. Staff projects that the County will recoup approximately \$20 million (\$13.5 million within 1-3 years and \$6.5-7.5 million [net present value] in long term annual rent payments). Based on Telesis / NHTPC's current finance plan and estimated initial rent payments of \$13.5 million, the County would carry approximately \$21 million in debt (prior to any payments from net cash flow of the Project), resulting in a subsidy per unit of approximately \$150,000. All debt would be paid for from Affordable Housing Investment Fund revenues. The County's long term investment in the Project would be approximately \$15 million.

CONCLUSION: It is recommended that the County Board approve the Deed of Ground Lease attached as Exhibit A, and authorize the Real Estate Bureau Chief or his designee to execute the Deed of Ground Lease and related documents on behalf of the County, subject to approval as to form by the County Attorney. It is also recommended that the County Board authorize the County Manager to execute any documents required to accommodate Tenant's financing of the renovations to the Property, subject to approval as to form by the County Attorney, if deemed necessary to maximize the tax credits for the Property.

EXHIBIT A
DEED OF GROUND LEASE

