

EXECUTIVE SUMMARY

ACTION ITEM:

Request for Authority to Enter into a Lease agreement with the City of Phoenix, a Sub Lease agreement with Capstone Development Corp, and a Project Development Agreement with Capstone Development Corp. and a single purpose limited liability corporation created by Mustard Seed Housing ("the LLC") to enable the development of student housing for the ASU Downtown Phoenix campus.

ISSUE:

Pursuant to ABOR Policy 7-207, Arizona State University (ASU) requests Board approval to enter into a Lease agreement with the City of Phoenix, a Sub Lease agreement with Capstone Development Corp, and a Project Development Agreement with the LLC and Capstone Development Corp to enable the development of student housing for the ASU Downtown Phoenix campus.

BACKGROUND:

At the Board meeting of November 30-December 1, 2006, the Board authorized ASU to negotiate lease and sub-lease agreements to permit a third party housing project to be developed at the Downtown Phoenix campus. The proposed terms for such agreements were approved at that time, with the requirement that the final documents be reviewed by the Capital Committee of the Board, Board Counsel, and University Counsel to assure that the approved terms were reflected in the final form of the agreements.

The final documents are structured in a somewhat different form than anticipated in the initial Board item and the intent of some of the terms have been accomplished in a somewhat different fashion, but the overall terms approved are all reflected in the final documents.

The initial board item outlining the background for the need for housing and the proposed terms is attached. Also attached is a detailed description of the means by which the approved terms have been captured in the final documents.

RECOMMENDATION:

RESOLVED: Arizona State University is hereby authorized to enter into a Lease agreement with the City of Phoenix, a Sub Lease agreement with Capstone Development Corp, and a Project Development Agreement with the LLC and Capstone Development Corp concerning the development of student housing on the Downtown Phoenix campus according to the terms and conditions set forth in this executive summary. Approval is subject to review by Board Counsel and University Counsel of the final documents noted in the resolution as well as any subsidiary documents required for assurance that they are fully aligned with the terms approved by the Board.

RESOLVED FURTHER: That the President of the University or the Senior Vice President and University Planner shall take such actions as may be necessary and properly execute the documents on behalf of ASU.

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**Capital Committee Update for April 18, 2007 Meeting
Comparison of Capstone Development-Documents to Previously Approved terms**

SUMMARY OF COSTS AND BUSINESS TERMS PROPOSED FOR THE LEASE:

Bold face type reproduces the business terms and deal points as worded in the Board item approved at the November 2006. The current arrangements are described below each of the initial points.

Major Deal Points from Board item approved at November 2006:

- 1. Development and Disposition Agreement – The project is to be administered by a Development and Disposition Agreement between the University and Developer.**
- 2. Land Gift – The Developer will “gift” to ASU three (3) lots owned on Taylor Street, between 1st and 2nd Streets.**
- 3. Land Lease – The land gifted by the Developer will be combined with adjacent parcels of land owned by the City of Phoenix and conveyed via a sub-lease with the Developer subject to the existing encumbrances under the Master Lease agreement between the City and ASU. The combined property will be leased to the Developer for a period of time between 30-40 years at a nominal rate.**

The primary change in the relationship proposed to the Board is the nature of the land consolidation and conveyance. Approximately half of the land needed for the project is controlled by Capstone Development and roughly half is owned by the City of Phoenix. In order to consolidate and entitle the land in a way that permitted the required design of the buildings to be feasible and legal (in regards to property line setbacks etc.), the parcels needed to be joined in a single entity. It has been determined that this could only happen via the City of Phoenix since the City was unwilling to donate the land to ASU or Capstone in advance of the project and without some form of compensation.

The structure accomplished via these documents preserves the initial intent that ASU owns all of the land and all of the improvements at the end of the project's indebtedness.

The final documents are:

Ground Lease

- ASU will lease the land required for the overall project from the City of Phoenix. This land includes the land owned by Capstone, which will be donated to the City of Phoenix, and the land already owned by the City of Phoenix. The University will then sub-lease the property to Capstone, which will assign that sub-lease to the not-for-profit entity that will own the improvements.

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- The ground lease between ASU and the City of Phoenix will be at no cost to ASU.. The sublease to Capstone will require lease revenue but will be paid by Capstone directly to the City of Phoenix to insure that there are no tax implications to ASU. Its duration will be for 40 years or until the debt on the project is paid off if that is sooner.
- The lease will include terms that guarantee the transfer of ownership of the entire parcel and improvements to ASU at no cost upon termination of the lease and any project indebtedness.
- Capstone and the not-for-profit owner of the improvements will commit to an equivalent land rent payment directly to the City of Phoenix via participation in the Series C/D/E bonds. This participation will be addressed in both the land conveyance document and the land gift documents between the entities and the City of Phoenix. There will be no direct financial obligation on the part of the University relating to the land rent.
- The lease limits the use of the property to housing for students, faculty, and staff of the three ABOR universities. Also permitted are uses associated with other educational activities, subject to ASU approval in order to have potential to improve occupancy during the summer months. (It should also be noted that there is another protection-with the facilities constructed through a tax exempt issuance, the project cannot be used for non-student, commercial housing, even in financial extremis, without refinancing the project.)

Ground Sub lease

- ASU will sub-lease to Capstone Development the combined parcel that has been leased from Phoenix. This sub-lease will include consent to the assignment of the land to a third party for purposes of the housing project.
- The owner of the leasehold improvements is proposed as a not-for-profit (501c3) entity, Mustard Seed Housing (MSH). MSH and its role are further explained under # 6 below.
- The lease term will be for a period of 40 years at nominal cost. At the end of the 40 years, unless the period of indebtedness is shorter, both the ownership of the land and the improvements will be transferred to the University.
- The ground sub lease will include all of the terms of the relationship between ASU and Capstone. These are fleshed out in the discussion of specific terms below:

Development and Disposition Agreement

- The project is to be administered by a Development and Disposition Agreement between Capstone Development and the not-for-profit entity, Mustard Seed Housing, and will include all operational requirements set forth in the ground sub lease.

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Major Deal Point from Board item approved at November 2006:

4. Financing – The Developer will provide 100% of the capital structure for the project.

Final document: Capstone remains responsible for all costs needed to construct and equip the facilities. The estimated costs of doing so have changed somewhat since the November presentation. A revised pro-forma is attached. While there are some changes, they are not such that they effect the projects viability at the rental rates that have been required by the University and which were described to the Board.

The substantive differences between the proforma reviewed in November 2006 and this one are as follows:

Project cost has increased from \$116,624,000 gross (\$106,265,000 net to finance) to \$120,917,000 gross (\$109,070,000 net to finance). This is an increase of \$4.3 million in the gross costs and \$2.8 million in the amount to finance). The primary drivers of the change are: site development and land acquisition costs -- up \$2 million; construction phase 1 costs- up \$.5 million and construction phase 2 costs - up \$1.6 million; bond insurance premium- up \$1 million. The reoffering premium offset to the costs improves \$2 million. Other changes are more minor. The construction costs have increased due to design requirements imposed by ASU and the City of Phoenix and due to re-estimates of cost inflation for the second phase. Site development costs have been increased to provide unanticipated utility infrastructure.

Rental rates have not been changed. They remain at \$695 per month shared, \$825 per month single bedroom in Fall 2008 dollars.

Series C structure now includes a component that will provide recompense to the City of Phoenix for the land that they currently own and which will be used in the project, further defined as Series D Bonds. The City Council has required that the City receive the opportunity for compensation for the land, but has permitted that compensation to be set up in the Series D contingent structure that is being used to provide a return to Capstone if the project performs well. The City's land valuation was based on current market value.

The initial Series C structure included a \$23.2 million issue for Capstone that provided up to \$2.24 million per year if available after senior and subordinate debt obligations were being met. The current structure, now referred to as Series D-E Bonds, includes a \$22.7 million issue for Capstone and a \$3.7 million issue for the City of Phoenix that would provide up to \$2.2 million and \$319,000 per year respectively if available after senior and subordinate debt obligations are being met.

With this structure, the land value from the City does not impact the rental rate requirements of the project. It does move the date of the pay-off of the bonds (if the pro-forma results are achieved) from the middle of the 24th year of the 30 year indebtedness to the middle of the 25th year of the 30 year indebtedness.

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Major Deal Point from Board item approved at November 2006:

- 5. Improvements – The Developer will construct the residence hall without financial involvement of ASU. At the end of the lease term, all or a portion of the Improvements will be gifted to ASU for value received.**

Final document: This remains the case. Title will be vested with ASU upon project completion and title and ownership will automatically vest with ASU upon termination of the debt obligations. (Ground Sublease Section 11 (k))

Major Deal Point from Board item approved at November 2006:

- 6. Management – The Developer will be responsible for the day-to-day operations of the Project. ASU and the Developer will negotiate provisions for student life and residential life activities.**

Final document: Capstone On-Campus Student Housing will be the manager of the project operations at opening. They can be replaced during the life of the project. ASU directly controls the right to recommend the manager of the project through the period of indebtedness via an Advisory Committee. The Advisory Committee is made up of 9 seats with ASU (a majority 5 seats), Capstone as manager (1 seat), City of Phoenix (1 seat), the community (1 seat) and Capstone as Developer (1 seat) represented. The Advisory Committee also advises Capstone, through Mustard Seed Housing, as manager on operations and reviews and makes recommendations on the annual budget. If the annual budget “differs materially with the recommendations of the Advisory Committee”, it is subject to the consent of ASU. There are a series of negotiation steps to allow an agreed plan to be adopted. Without agreement, the budget cannot be increased by more than the Consumer Price Index. (Ground Sublease Section 18 (c) ii), except as may be required to avoid default under the bond documents.

Capstone assigns to ASU the obligation to provide the Resident Life Services and assigns at no cost the space needed to house RA’s and other staff needed. (Ground Sublease Section 12(d))

Mustard Seed Housing, through the LLC, is the Owner of the project and the issuer of the debt financing. They hire Capstone as the manager for all purposes except for student life activities which are handled by ASU. Mustard Seed plays no direct role in the day-to-day management of the operations. Operation plans and annual budgets are proposed by Capstone and are subject to the Advisory Committee process described above. Capstone’s obligations to MSH are to insure the proper up-keep of the facility and conduct the operations in a way that assures that the financial obligations to the bond-holders can be met. (Even with the explanation of the structure which puts MSH in a non-management role, it is worth addressing concerns about MSH. MSH was initially founded in 2000 with a primary, but not sole, goal of advancing and making more financially feasible housing projects with faith-based sponsors, and is the owner of one project at the University of California-Berkley with the Presbyterian Church. MSH continues to own that project, but has changed its articles of incorporation to broaden its role to all forms of affordable housing for students and others. It does not have a faith-based mission and there are no faith-based elements of any form whatsoever in the relationship with Capstone on this project.)

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Major Deal Point from Board item approved at November 2006:

- 7. Maximum Exposure – To the extent that an occupancy rate of 99% is not achieved during the academic year, in the four year period from Fall 2008 to Spring 2012 (or until the third phase project is open sooner than 2012), the University will agree to directly lease from the Developer a varying percentage of the last of the student beds during a 10 month rental period up to the projected occupancy rate of 99%. The schedule proposed are exposures limited to:**
- **the last 15% of the beds up to 99% in the first year of Phase I and Phase II,**
 - **the last 10% of the beds up to 99% in the second and third year of Phase I and the second year of Phase II,**
 - **the last 5% of the beds up to 99% in the fourth year of Phase I and the third year of Phase II,**
 - **no further exposure after the fourth year of Phase I and the third year of Phase II.**
 - **ASU's maximum potential of required direct leasing in this arrangement is: \$781,875 in year 1; \$1,095,000 in year 2; \$903,500 in year 3, \$451,750 in year 4; and zero thereafter. The levels of exposure are a balance between the university's desire to avoid any exposure and the need for the developer to obtain favorable financing terms. The issues are the need to mitigate the risk factors of the new campus and to achieve debt coverage ratios at the rental rates required by ASU. Given the scale of the project in relation to enrollment levels projected, the existing demand of housing by students in the programs that will be downtown, and the limited options for other housing in the downtown, ASU believes that it's actual potential of having to directly lease units at anything near the maximum levels will be quite low, but it will budget for the contingent costs in each year that the exposure exists.**

Final document: ASU will agree in advance to leasing in each of the first four years that number of beds that represent the numbers proposed below. Payments are made in the identified year, not on an up-front basis. The proportion of beds is set at the level of the prior proposal. The slight variation in total value is due to a larger number of beds in the final calculation and the use of a 4% inflation rate instead of 3%.

- 111 beds (15% of 720 phase 1 beds) in 08-09 = \$771,450.
- 72 beds (10% of 720 phase 1 beds) plus 80 beds (15% of 533 phase 2 beds) in 09-10 = \$1,155,840
- 72 beds (10% of 720 phase 1 beds) plus 53 beds (10% of 533 phase 2 beds) in 09-10 = \$977,780
- 36 beds (5% of 720 phase 1 beds) plus 26 beds in (5% of 533 phase 2 beds) in 11-12 = \$504,140

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These are tied to the need for additional beds for Tempe and other campuses. Capstone has the “right” to request the beds back to meet their rental demand. In this way, ASU will only have the obligation if the previously-agreed upon demand levels are not met. If they are exceeded, either Capstone will ask for their “return” or ASU will have a market for them. This accomplishes just what was proposed and is structured in this way because the contingent aspect of the agreement was seen as constituting a mild exposure in the case for the deal being considered off-credit. (Section 13 (d)).

While there were no obligations to reimburse ASU in the initial proposal Capstone has now agreed to provide for a form of potential reimbursement through the following direct contribution to Resident Life programming:

(g) Project Contribution to Residential Life. The Lessee will make an annual contribution to the Campus Residential Life program from available funds after the payment of D and E bonds on an annual basis, such annual contribution to begin no earlier than the fifth year of operation of the Project. The amount of each such annual contribution shall be recommended by the Advisory Committee, however, in no event shall the cumulative total of such annual contributions exceed \$3.4 million dollars.

Major Deal Points from Board item approved at November 2006:

- 8. Pricing - The University will require that there be a maximum limit on the price set for the student accommodation at the project’s opening. Should the maximum rental price limit not be achieved, the University will not be required to directly lease from the Developer. The maximum price at opening must not be out of line with other new University housing. Current discussions suggest a rate of between \$695 per month for a shared accommodation unit with a ten month lease. The rental rate is intended to be fully inclusive of utilities including water, sewer, electricity, gas (if required), cable TV, and internet connectivity. Rent will be permitted to escalate at the maximum rate of 3-4% annually or equivalent to similar Tempe housing rates, whichever is greater.**

Final documents: The proforma establishes the maximum prices for the opening of the project and they are at the previously-discussed level of \$695 in Fall 2008 dollars for the standard four person/two bathroom shared accommodations. Subsequent increases will be determined by an annual budget process. As noted above, the Annual Budget is considered by the Advisory Committee, which has an ASU majority representation. If the annual budget “differs materially with the recommendations of the Advisory Committee”, it is subject to the consent of ASU. There are a series of negotiation steps to allow an agreed plan to be adopted. Without agreement, the budget cannot be increased by more than the Consumer Price Index, unless that would result in a default under the bond documents. (Ground Sublease Section 18 (c) ii) which would require sufficient revenues to cover payment of A, B, and C bonds. It was determined in the negotiation process that a fixed limit on the size of the rent increase would be a problem in the bond issuance, and the CPI limit was devised as a means of reasonable protection on rent increases.

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Major Deal Points from Board item approved at November 2006:

- 9. Non-compete – The University will agree that it will not enter into any other student housing development agreements for the Downtown Campus, so long as the Developer meets certain performance requirements, that will include rent escalations and other criteria associated with safety, amenities, staffing levels, and overall satisfaction.**

- 10. Continuation of Phasing: Each subsequent phase, after Phase I and II, is contingent on satisfactory delivery of the previous phase (on-time and with anticipated price level) and a satisfactory operations report (behavior, safety, and price escalation).**

Final documents: There have been some limits placed on Capstone's exclusive rights. While Capstone is granted the right to develop and manage up to 4,000 beds, ASU is allowed to build competing facilities as long as Capstone's project has achieved net revenues of 1.2 times debt service coverage in each of the past two years and an independent consultant agrees that the 1.2 ratio will be sustained even after competing facilities are available. (Section 13 (b) of sublease.) In the event ASU elects to have additional housing built, ASU agrees to first negotiate in good faith with Capstone for such services, subject to satisfactory performance and mutually acceptable terms. (Section 13 (c) of sublease.)

Minimum standards for upkeep and responsiveness are outlined in the Ground Sublease in Section 14 (d)

EXECUTIVE SUMMARY

November 30-December 1, 2006 ABOR Item

ACTION ITEM:

Request for Authority to Enter into a Lease or Sub Lease agreement with Capstone Developments, as a Master Developer for Student Housing for the ASU Downtown Phoenix campus.

ISSUE:

Pursuant to ABOR Policy 7-207, Arizona State University (ASU) requests Board approval to negotiate and enter into a Lease or Sub Lease Agreement with Capstone Developments, for the development of student housing for the ASU Downtown Phoenix campus.

BACKGROUND:

Arizona State University at the Downtown Phoenix campus opened its inaugural year this Fall 2006. Phase I of the campus brought the Colleges of Nursing and Public Programs and University College to the Downtown campus. Projected enrollment for the first year is 2,500 to 3,000 students. By Fall semester 2008, and with the addition of the Cronkite School, the projected number increases to 7,500, and by the year 2014, it is expected that nearly 12,000 students will enroll. Over a longer time, the campus is expected to grow to its capacity of 15,000 students.

Following approval at the April 2006 ABOR meeting, the University entered into an agreement with City Center, LLC, to lease the Ramada Inn property for use as student housing in the 2006-07 and 2007-08 academic years. The Ramada Inn property has been renamed the Residential Commons and has the capacity to house up to 260 students. This provides the Downtown Phoenix campus with a temporary start-up program for student housing. However, Residential Commons is not intended or desirable as a permanent facility and will not be sufficient to meet the needs of the campus after the School of Journalism relocates from Tempe and as the enrollment in University College grows. Providing appropriately designed and managed student housing, particularly for freshmen, is an important component of ASU's efforts to improve retention and graduation rates since students who live on campus and are supported in their transition to college and its demands have substantially improved retention rates.

By Fall 2008, the University anticipates the need to accommodate 750 to 800 students at the Downtown Phoenix campus. This would represent about 10% of the anticipated overall enrollment at that time, and roughly 50% of the anticipated freshman and first-time student

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enrollment. This is generally in line with current usage rates of housing on the Tempe campus. Over time, ASU expects that the Downtown Phoenix campus will require 3000 to 4000 beds. On the Tempe campus, more than 1310 students from the College of Public Programs, the College of Nursing, University College, and the Cronkite School of Journalism lived in housing last year. With the move of these programs in Fall 2006 and the Cronkite School in Fall 2008 to the Downtown Phoenix campus, there is an anticipated enrollment of 7500 students including nearly 1200 freshmen. With the increase in student enrollment, limited appropriate market housing opportunities in Downtown Phoenix, and current student demographics (approximately 70% of the students enrolled at the Downtown Phoenix Campus are female) the University anticipates a strong demand for beds at the new student housing facility.

ASU has determined that, given its existing debt capacity, the priority of other academic facility needs, and the existence of a private market industry for student housing, it can best meet the housing needs of the Downtown Phoenix campus through a relationship with a private developer. ASU conducted an RFQ process to select a private developer who will be able to meet the phased needs of the planned growth of the residential student population in downtown Phoenix. After the selection process, one developer was chosen with which to negotiate, A&L Investments. A&L Investments brought forward a competitive team to meet the university's demands, including Capstone Development, a nationally recognized and respected company in the field of student housing. Since the time of the selection process, Capstone and A&L Investments have completed arrangements for Capstone Development ("the Developer") to become the lead partner and the sole point of ASU contact. A&L has assigned its rights under the selection RFP to Capstone. They have also taken on the options that A&L had on the required parcels of land and are working to assure that they are available for the project. A&L Investments retains a 20% share in the profits from the project.

The proposed development is on a site on Taylor Street between First Street and Second Street. See attached aerial graphic of the site. The site includes parcels controlled by the Developer (the unnumbered parcels) and City owned parcels (#10, #11, and #12 and small portions of parcels #4 and #9).

The University and the Developer intend to approach student housing on the Downtown Phoenix Campus on a phased basis. The phased growth of student housing will allow the Developer and the University to work together to plan for appropriate student housing as the need materializes. The first phase is expected to be 700-750 beds oriented toward freshman and planned for occupancy in August, 2008. The second phase is expected to be 500-550 beds oriented towards upperclassmen and planned for occupancy in August 2009. Subsequent phases will include additional housing that will satisfy the spectrum of the student body from the freshmen through upperclassmen. Approval is not being sought for any subsequent phases and ASU will review later phases with ABOR before proceeding.

The housing will be constructed, financed, and operated entirely by the Developer. The University's involvement will be limited to providing assurances of not competing, land for future phases, and a limited financial exposure during the early stages of the project's life. The

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student's financial relationship will be with the Developer. The University will work with the Developer in providing certain academic support services in the project.

Land acquired by the Developer and land owned by the City of Phoenix are required for the first two phases. The Developer's land will be given to the University and the City's land will be leased to the University at nominal cost. The University proposes to lease the combined parcel to Capstone for a period of 30 years at nominal cost. At the end of the 30 years (or the period of indebtedness by Capstone if it is sooner), the land will revert to the University and the City, respectively. While it is the University lease to Capstone that requires ABOR approval, the entire relationship is being outlined as important context for that real estate transaction.

SUMMARY OF COSTS AND BUSINESS TERMS PROPOSED FOR THE LEASE:

Major Deal Points:

- 11. Development and Disposition Agreement** – The project is to be administered by a Development and Disposition Agreement between the University and Capstone Development.
- 12. Land Gift** –Capstone will “gift” to ASU three (3) lots owned on Taylor Street, between 1st and 2nd Streets.
- 13. Land Lease** –The land required for the project will come from a combination of City land and land acquired by Capstone.
- 14. Financing** – The financing structure proposed by Capstone would bond the entire cost of the project (phases I and II), including the land (which when A&L had been the owner of the option had previously been shown as an equity contribution in the pro-forma).

The owner of the leasehold improvements is proposed as a not-for-profit (501c3) entity such as Collegiate Housing Foundation or a qualified 6320 entity. The total project cost, including financing, is currently anticipated in the finance model at \$116,624,000, with \$106,265,000 to bond for the total development cost for constructing Phases I and II (after interest earnings and a re-offering premium are deducted). This is structured as \$68.7 million in Series A senior bonds and \$37.6 million in subordinate Series B bonds. They would be issued as tax-exempt bonds.

The pro forma also shows a Series C bond issue. These are subordinate, cash flow bonds that would be privately placed with Capstone and its partners (such as A&L and potentially the City of Phoenix as compensation for city land). They are sized to provide a calculated fair market value return to Capstone. Surplus generated beyond that required for Series C payments would be held by a Trustee and invested to be used to repay the bonds in order of seniority in advance of the maturity dates. Rough calculation shows that if the pro forma results were achieved and the surplus funds are applied in that fashion, all three series would be fully paid during the 23rd year.

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15. Improvements – Capstone will construct the residence hall without financial involvement of ASU. At the end of the lease term, all or a portion of the Improvements will be gifted to ASU for value received.

16. Management – Capstone will be responsible for the day-to-day operations of all aspects of the Project. ASU and Capstone will negotiate provisions for Student Life Activities.

17. Maximum Exposure – To the extent that an occupancy rate of 99% is not achieved during the academic year, in the four year period from Fall 2008 to Spring 2012 (or until the third phase project is open sooner than 2012), the University will agree to directly lease from Capstone a varying percentage of the last of the student beds during a 10 month rental period up to the projected occupancy rate of 99%. The schedule proposed are exposures limited to:

- the last 15% of the beds up to 99% in the first year of Phase I and Phase II,
- the last 10% of the beds up to 99% in the second and third year of Phase I and the second year of Phase II,
- the last 5% of the beds up to 99% in the fourth year of Phase I and the third year of Phase II,
- no further exposure after the fourth year of Phase I and the third year of Phase II.

ASU's maximum potential of required direct leasing in this arrangement is approximately: \$775,000 in year 1; \$1,150,000 in year 2; \$975,000 in year 3, \$500,000 in year 4; and zero thereafter.

The levels of exposure are a balance between the university's desire to avoid any exposure and the need for Capstone to obtain favorable financing terms. Capstone's issues leading to the need for guarantees are: (1) the need to mitigate the risk factors associated with opening housing on a new campus with no track record of housing or student enrollment; and (2) the need to achieve on the pro forma debt coverage ratios at the rental rates required by ASU. ASU would gain from Capstone the following financial benefits in exchange for the four years of guarantees (limited to about \$3.4 million over four years):

- Immediate ownership of land valued at \$5.1 million under the option price (the Woodward and Palandri parcels).
- Ownership of the improvements on the land at the end of the period of the projects indebtedness (about the 23rd year if the pro forma is met; 30th year at worst).
- Naming rights to the facility (granted by the not-for-profit to ASU) which provides a fund raising opportunity.

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- Reimbursement by Capstone of any expended guarantee monies from project surplus as it becomes available.

With appropriate phasing of project size and cooperative efforts at marketing the value of on-campus housing to student success, the risks of the University incurring these additional costs will be low. ASU will assure that planning in the size and use of existing reserves within the overall auxiliary budget for residential life and within general reserves takes into account the need to have the ability to meet any additional costs that may be required. Housing rates in existing University-owned residence halls will not be impacted by this.

- 18. Pricing** - The University will require that there be a maximum price set for the student accommodations at the project's opening. Should the maximum rental price not be achieved, the University will not be required to directly lease from Capstone. The maximum price at opening must not be out of line with other new University housing. Current discussions are for a rate not to exceed \$695 per month for a shared accommodation unit with a ten month lease. The rental rate is intended to be fully inclusive of utilities including water, sewer, electricity, gas (if required), cable TV, and internet connectivity. Rent will escalate at the rate of 4% annually or equivalent to similar Tempe housing rates, whichever is greater.
- 19. Non-compete** – The University will agree that it will not enter into any other student housing development agreements for the Downtown Campus, so long as the Capstone meets certain performance requirements, that will include rent escalations and other criteria associated with safety, amenities, staffing levels, and overall satisfaction.

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20. Continuation of Phasing: Each subsequent phase, after Phase I and II, is contingent on satisfactory delivery of the previous phase (on-time and with anticipated price level) and a satisfactory operations report (behavior, safety, and price escalation). Subsequent phases require Board review.

21. Resident Assistants – The University will receive, at no cost, beds for a pre- determined number of Resident Assistants (RA) to provide academic support.

FISCAL IMPACT:

During the period between the agreement with Capstone to move forward (post-Regent approval) and the confirmation of the cost assumptions in the pro forma, Capstone will incur significant costs in land acquisition and design. Capstone has proposed the following protective terms; if the University determines to not move the School of Journalism to the campus, Capstone could claim reimbursement of all design and development costs expended. If there are material increases in the costs of the project beyond the level forecast in the pro forma, Capstone would expect the University to work cooperatively to examine modifications to the project to reduce costs to the planned level and would permit the required rent levels to be achieved, and if such reductions are not possible, to work cooperatively on defining new rent levels that would permit the project to proceed with the same University participation. (It should be noted that significant contingency has been built into the estimates in an effort to avoid such a scenario.) The University agrees that these are reasonable provisions. As last step, they seek assurance that the property they acquired reverts to their ownership and that the University will work with them on provisions regarding the City property such that they could proceed with a student housing project independent of ASU participation. Discussions are not yet complete on this aspect of the arrangement.

RECOMMENDATION:

RESOLVED: Arizona State University is hereby authorized to enter into a Lease or Sub-Lease with Capstone Developments concerning the development of Student Housing on the Downtown Phoenix campus according to the terms and conditions set forth in this executive summary, subject to approval by the ABOR Capital Committee and Board, and subject to review by Board counsel and University counsel of the final document.

RESOLVED FURTHER: That the President of the University or the Senior Vice President and University Planner shall take such actions as may be necessary and proper to negotiate and execute the Master Lease on behalf of ASU.

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Attachment

