

Memorandum Date: October 19, 2009
Order Date: November 10, 2009

T.S.F.I.

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Frank Simas, Right of Way Manager

AGENDA ITEM TITLE: In The Matter of Authorizing the County Administrator to Sign a Letter of Intent with Marc Sales & Leasing, LLC, Regarding the Lease of a Parcel of County-Owned Surplus Road Fund Property Located on River Avenue, Eugene, and Identified as Tax Lot 501 on Lane County Assessor's Map 17-04-13-22.

I. **MOTION**

MOVE APPROVAL OF THE ORDER.

II. **AGENDA ITEM SUMMARY**

Marc Sales & Leasing, LLC, has requested that the County sign a Letter of Intent (attached and identified as "Attachment 1") signifying the intent of Lane County to enter into a long term lease of a parcel of County-owned Road Fund property proposed to be used for the construction and operation of retail store for the sale and leasing of home furnishings, electronics, appliances and jewelry.

III. **BACKGROUND/IMPLICATIONS OF ACTION**

A. **Board Action and Other History**

By Order 07-8-29-12, the Board authorized the County Administrator to sign an Intergovernmental Agreement (IGA) with Lane Transit District (LTD) regarding the sale of a portion of County-owned surplus Road Fund property located at 11 River Avenue, Eugene. In connection with the sale of the property and in accordance with the Proposed IGA, authorization was also given for the completion of a Land Partition in order to retain a portion of the County-owned property to be leased to produce a revenue stream to help support Road Fund operations in the future thereby allowing the leased portion of the property to be returned to the tax rolls.

By Order 08-10-1-8 the Board approved a 180-day Option to Lease with Pacific Continental Bank (PCB). The Option was extended pursuant to Order 09-4-29-7 under the same terms and conditions to allow the bank to complete outstanding "due diligence" concerns. The bank was ultimately not able to work out all development issues to allow the use of the property as it had intended and notified Lane County on May 20, 2009 that it wished to terminate the Option Agreement. An "Available for Ground Lease" sign has been on the property since early June, 2009, and this proposal came to the attention of staff on October 13, 2009.

B. Policy Issues

This project is located within the City of Eugene, and it is mutually beneficial to the City and the County that this property be returned to the tax rolls. Leasing of the property will also provide a continuing revenue stream for the Road Fund, and if necessary in the future, the property could be sold to an investor with the lease in place.

C. Board Goals

This project addresses the County Goal of contributing to “appropriate community development in the area of transportation and telecommunications infrastructure, housing, growth management and land development”.

D. Financial and/or Resource Considerations

This property is a Road Fund asset, and any rents received from the lease will be credited to the Road Fund.

E. Analysis

The proposed rental for the initial 5-year term of the lease is the same amount that was set forth in the proposed lease to Pacific Continental Bank. The other terms of the lease proposed under this Letter of Intent are also very similar to the lease proposed with PCB with the following exceptions:

- The proposed term of the lease is 60 years for the initial term, with two (2) fifteen (15) year options to renew, as compared to a 30-year initial term with three (3) five (5) year options to renew.
- The "use" clause is less restrictive under this proposal, in that it allows all legal uses of the property with the exception of "adult" businesses including adult book stores, night clubs, strip clubs, gambling, games of chance or similar activities. The proposed lease with PCB specified branch bank use, with any other uses subject to County approval.
- Numerous contingencies are to be fulfilled after the inception of the lease: including County approval of the planned building and other improvements, successful negotiation of a long-term parking agreement between Marc Sales & Leasing and Lane Transit District for the use of 6 parking spaces, and the tenant receiving all permits necessary to construct the planned building within 120 days of lease signing (subject to

an extension of up to an additional 90 days by written notice from the tenant to the County or such other period as may be agreed between the parties. The previous proposal provided for due diligence to be completed under the Option Agreement term.

- The current proposal does not call for the payment of rent prior to the signing of a lease as was the case with the PCB option agreement. Marc Sales & Leasing will be obligated to pay rent as soon a lease has been signed, but can terminate within the 120 day period should the contingencies not be fulfilled.

The proposed rental amount for the property is based on an 8% annual rate of return on investment on a triple-net basis, with the lessee to be responsible for the payment of all expenses related to the leased area including property taxes. The rental will be \$44,520 on an annual basis (\$3,710 per month) for the initial 5-year term, and will be adjusted annually thereafter in accordance with the increase or decrease in the Consumer Price Index (CPI – All Urban Consumers) or such successor index as may be published in the future.

The option obligates the County to pay to Campbell Commercial Real Estate, as agent for Marc Sales & Leasing, a total of \$35,600 in two installments; 10% upon execution of the lease with the balance payable upon expiration of the contingency period, as a commission for bringing the lease proposal to Lane County. By custom, this would normally be an expense borne by the lessor, and this is addressed in the Letter of Intent and in the proposed lease due to the fact that because Campbell Commercial is not under contract to Lane County, they could not otherwise be paid by the County for procuring the tenant.

Campbell Commercial and Marc Sales & Leasing is agreeing to hold the County harmless with regard to any additional payment or obligations beyond what is stated in the Letter related to procuring this lease.

Although the gross size of the property is 20,830 s. f. per the recorded survey, there are portions of the property along both River Avenue and River Road where the public sidewalk encroached onto the County property which were dedicated to the City of Eugene for public right of way. After the dedications, the net usable area of the parcel is 17,394 s. f.

The leasing of this property will provide funds to support continuing Road Fund operations and will allow the County to retain an appreciating asset, and receive an inflation-adjusted income stream for up to 90 years. In the event of default, the County would reclaim possession and assume ownership of the building and site improvements.

The initial rental due under the proposed lease is in line with the estimated market value as concluded in two appraisals (one by Lane County staff and one by an independent fee appraiser), and the 8% annual return on investment on a "triple net" basis is considered attractive when commercial investment property is concerned.

F. Alternatives/Options

1. Approve the Order authorizing the County Administrative Officer to sign the Letter of Intent.
2. Deny the Order and direct staff otherwise.

V. TIMING/IMPLEMENTATION

If the Board approves the Order, Public Works staff will notify Marc Sales and Leasing and will forward a signed copy of the letter to its leasing agent.

VI. RECOMMENDATION

Option 1.

VII. FOLLOW-UP

Staff will return to the Board for final approval of the lease upon successful completion of negotiations.

VII. ATTACHMENTS

Attachment 1 – Letter of Intent

Marc Sales & Leasing LLC

55 East Jackson Boulevard, Suite 500
Chicago, IL 60605

October 29, 2009

VIA E-MAIL

Mr. Tim Campbell
Campbell Commercial Real Estate
PO Box 10066
Eugene, OR 97440

RE: 11 River Avenue, Eugene, OR

Dear Mr. Campbell:

The purpose of this letter is to set forth the terms and conditions upon which Lane County (as "Landlord"), will enter into a Ground Lease with Marc Sales & Leasing LLC dba Aaron's, Inc. (as "Tenant") for the above referenced property, more particularly described below.

Property: Approximately 17,393 sq ft of land located at 11 River Avenue, Eugene, Oregon.

Tax Parcel No: 17-04-13-22-00501.

Term of Lease: Sixty (60) years

Options: Two (2) fifteen (15) year options to renew with One hundred and eighty (180) days' written notice to landlord

Net Ground Rent: Tenant shall pay Net Rent in the amount of \$3,710.00 per month for the first five years of the Lease. After the fifth lease year and including all Option Periods, the Net Rent shall be adjusted annually to reflect any changes in the Consumer Price Index (CPI - All Urban Consumers, published by the US Departments of Labor, Bureau of Labor Statistics) or such other comparable replacement or successor index which may be published by the US Government for the purpose of measuring the change in consumer prices over time, with no adjustments exceeding five percent (5%) over or under the previous Net Rent calculation.

Taxes, common area maintenance & Insurance: Tenant shall pay all of the real estate taxes, insurance, and maintenance associated with the Property in addition to net ground rent.

Development of Site: Tenant plans to build an approximately 8,000 square foot retail building in similar design and quality to its building located at 1990 W 11th Avenue. Tenant will pay all fees and costs associated with the development and construction of tenant's improvements on the

property, except that Landlord will pay fifty percent (50%) up to a maximum of \$20,000 of the fees and costs incurred by Tenant in connection with modification of the existing Property approach from River Avenue. Tenant's improvements will be and remain Tenant's property for the term of the Ground Lease but title to the improvements will revert to Landlord at the expiration or earlier termination of the Ground Lease.

Signage: Tenant shall be allowed maximum signage allowed by law and existing code. Costs of all signage to be Tenant's responsibility.

Use Clause: Tenant shall be permitted to operate retail sales and leasing of home furnishings, electronics, appliances and jewelry, including rental returns and any other legal use that is not prohibited by law. **Notwithstanding the foregoing, Tenant or its assigns, sublessees or successors, may not conduct any activities on the Property that would involve activities, merchandise or services that are generally considered to be "adult" in nature; including adult book stores, night clubs, strip clubs, gambling, games of chance or similar activities.**

Option to Purchase: The Ground Lease will also contain a right of first refusal, giving Tenant the first option to purchase the land if Landlord decides to sell the land.

Lease Preparation: The Ground Lease shall be prepared by Tenant, subject to review and approval of Landlord's Board of Commissioners within 60 days following the date of this letter (subject to extension of up to an additional 30 day period by written notice from Tenant to Landlord [c/o Frank Simas, Public Works Department, 3040 North Delta Highway], or such longer period as Tenant and Landlord may agree). The Ground Lease will contain such terms, covenants, conditions and other provisions as are consistent with this letter and as are customary in financeable ground leases (including but not limited to provisions relating to lender notice and cure rights), and will provide for the recordation of the Ground Lease or a memorandum of the Ground Lease.

Ground Lease Contingencies: Tenant's obligations under the Ground Lease are subject to satisfaction of the following conditions: 1) Tenant and Aarons, Inc. corporate approval; 2) Landlord review and approval of Tenant's planned building improvements, such approval will not be unreasonably withheld; 3) Tenant receiving all necessary permits to construct its building within 120 days of Lease signing (subject to extension of up to an additional 90 day period by written notice from Tenant to Landlord [c/o Frank Simas, Public Works Department, 3040 North Delta Highway], or such longer period as Tenant and Landlord may agree); 4) Tenant and Lane Transit District entering into a long term parking agreement reasonably satisfactory to Tenant for six (6) parking spaces in the adjoining LTD lot; 5) Tenant review and approval of title and access to the Property and Tenant receiving all necessary easements for access to the Property; and 6) completion of Tenant's final due diligence regarding the property's condition and suitability for development for tenant's proposed purpose. In this latter regard, Landlord hereby grants Tenant (and Tenant's agents) a license to enter onto the Property to inspect and conduct such investigations as are reasonably necessary to satisfy condition six, provided that Tenant may not cause any damage to or make any permanent alteration of the property and will hold harmless Landlord from and against any loss, cost, expense, claim or other liability arising out of Tenant's inspections or investigations pursuant to condition six.

Brokerage/Leasing Commission. Campbell Commercial Real Estate represents Marc Sales & Leasing LLC as leasing agent with regard to the property. Campbell is not an agent of County and is not acting and has not acted on behalf of Lane County with respect to this letter or the Ground Lease that is subject to this agreement. As consideration for the Ground Lease of the

Property, Lane County will pay to Campbell the sum of \$3,600 upon execution of the Ground Lease and pay an additional \$32,000 after all Ground Lease Contingencies have been met or waived by both Landlord and Tenant. Tenant agrees to hold Lane County harmless from any claims of Campbell or its agents with regard to the payment of any commission or fee related to the execution of the Ground Lease other than as provided above.

Effect of Letter Agreement: This letter, when countersigned by Landlord, reflects the parties' understanding that the transaction proposed by this letter will require further documentation and approvals, including the preparation, negotiation and approval of a formal agreement setting forth the terms and conditions of the Ground Lease; nevertheless, this letter is executed as evidence of the parties' mutual intention to proceed in good faith in a manner consistent with this letter."

Please indicate your agreement to the foregoing by signing and dating the acceptance as noted below. Thank you and we look forward to your favorable response.

Very truly yours,

Marc Sales & Leasing, LLC



James M. Tully, Manager

Agreed to and Accepted:

Landlord: Lane County

BY: _____
Its: _____

Date: _____

**IN THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON**

ORDER NO.

(**IN THE MATTER OF AUTHORIZING THE**
(**COUNTY ADMINISTRATOR TO SIGN A**
(**LETTER OF INTENT WITH MARC SALES &**
(**LEASING, LLC, REGARDING THE LEASE**
(**OF A PARCEL OF COUNTY-OWNED**
(**SURPLUS ROAD FUND PROPERTY**
(**LOCATED ON RIVER AVENUE, EUGENE,**
(**AND IDENTIFIED AS TAX LOT 501 ON LANE**
(**COUNTY ASSESSOR'S MAP 17-04-13-22.**

WHEREAS, by Order 07-8-29-12, the Board authorized the County Administrator to sign an Intergovernmental Agreement (IGA) with Lane Transit District (LTD) regarding the sale of a portion of County-owned surplus Road Fund property located at 11 River Avenue, Eugene, and also authorized the completion of a Land Partition in order to retain a portion of the property to be leased to produce revenue to help support Road Fund operations in the future; and

WHEREAS, Marc Sales & Leasing has requested that the County sign a Letter of Intent signifying the intent of Lane County to enter into a long-term lease of said portion retained by Lane County; and

WHEREAS, the terms of said proposed lease provide for an initial term of 60 years with 2- 15-year options to renew, with rental for the first 5 years of the lease in the amount of \$44,520 on an annual basis (\$3,710 monthly), with the rental amount thereafter to be adjusted annually in accordance with the change in the Consumer Price Index (CPI-U) published by the U.S. Department of Labor, Bureau of Labor Statistics, not to exceed 5% plus or minus in any one period; and

WHEREAS, said lease will require total payment of \$35,600 to Campbell Commercial Real Estate in recognition of its agency relationship with Marc Sales & Leasing to be paid in two installments of \$3,600 (10%) upon execution of the lease and with the balance of \$32,000 (90%) to be paid upon expiration of the 120-day contingency period or any extension thereof; and

WHEREAS, ORS 271.310(1) allows the lease of property not needed for public use whenever the public interest may be furthered; and the subject property is not needed for any public use now or in the foreseeable future and the public interest will be furthered by the return of the property to the tax rolls;

NOW THEREFORE BE IT

ORDERED that the County Administrator is hereby authorized to sign the Letter of Intent signifying Lane County's intention to enter into such a lease for the property described on "Exhibit A" in accordance with the general terms as set forth above, and with the understanding that any lease shall be subject to final approval by the Board; and

IT IS FURTHER ORDERED that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this _____ day of _____, 2009.

Pete Sorenson, Chair
Board of County Commissioners

APPROVED AS TO FORM:

Date: 10-30-09



Lane County Office of Legal Counsel

EXHIBIT "A"

LEGAL DESCRIPTION FOR PARCEL 501

LANE COUNTY ASSESSOR'S MAP 17-04-13-22

Beginning at a point on the Southerly right-of-way of County Road No. 1353 (known as Beltline Road) as said road was surveyed in 1964, opposite and 95 feet distant Southerly of Engineer's Centerline Station L128+05.00, said point also being 2371.57 feet South and 1466.10 feet West of the South Southeast corner of the L. Poindexter Donation Land Claim No. 52, in Section 12, Township 17 South, Range 4 West of the Willamette Meridian; thence South 53°53'15" West 102.16 feet; thence South 38°58'37" West 115.43 feet; thence South 19°10'08" West 240.36 feet to the north margin of River Avenue; thence along said north margin South 82°42'13" West 114.44 feet to the True Point of Beginning; thence continuing South 82°42'13" West 123.09 feet to the easterly margin of River Road; thence along said easterly margin (being common to east bound on-ramp of said County Road No. 1353, known as Beltline Road) North 07°10'02" East 21.88 feet; and North 12°13'47" West 76.32 feet; thence leaving said east margin bearing North 78°49'17 East 21.63 feet; thence North 10°21'12" West 34.26 feet; thence North 79°37'51" East 178.13 feet; thence South 19°58'39" West 160.27 feet to the True Point of Beginning, all in Lane County, Oregon.