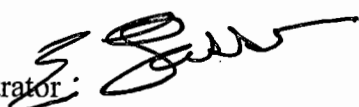




Interoffice Memorandum

**DATE:** August 13, 2018

**TO:** Mayor Teresa Jacobs  
-AND-  
Board of County Commissioners

**FROM:** Eric D. Gassman, Deputy County Administrator 

**SUBJECT:** UCF Lake Nona Cancer Center  
Discussion Agenda – August 21, 2018

**Background**

At the January 23, 2018 meeting of the Orange County Board of County Commissioners (the “BCC”), the BCC directed Orange County (“County”) staff to work with the University of Central Florida, (“UCF”) the City of Orlando, (“City”) Lake Nona Land Company, LLC, (“LNLC”, and together with County and City, collectively, the “Funding Parties”) and Sanford Burnham Prebys Medical Discovery Institute, Inc. (“SBP”) on an agreement for UCF to take over operation of approximately 12 acres of land located in Medical City at 6400 Sanger Road, Orlando, Florida, 32827, (the “Site”) as well as the bio-medical research facility located on the Site (presently known as the Sanford Burnham Prebys Medical Discovery Institute at Lake Nona) consisting of approximately 173,000 square feet in one or more buildings and associated infrastructure, utilities, and site improvements (the “Facilities”, and together with the Site, collectively, the “Property”).

**Transaction Summary**

As directed by the BCC, County staff has worked with UCF, SBP, and the other Funding Parties to structure a deal that provides for: (i) SBP’s release of any interests in the Property and any claims against County that SBP may have by virtue of prior agreements involving County and SBP related to the Property; and (ii) the transfer of the Property to a direct support organization of UCF, University of Central Florida Real Estate Foundation, L.L.C., (“DSO”) for the sum of \$50,000,000.00. DSO will pay all costs associated with the conveyance of the Property. The transfer of the Property is expected to occur on August 27, 2018.

Contemporaneously with the transfer of the Property to DSO, DSO, as lessor, will enter into a long-term “Master Lease” with UCF, as lessee, (the “Master Lease”) to provide for UCF’s use and occupancy of the Property. At the same time, UCF, as sublessor, will enter into a “Facility

Sub Lease” with SBP, as sublessee, (the “**SBP Sublease**”) in order to provide SBP with a short period of time to wind down operations at the Property. Full possession of the Property is expected to be delivered to DSO on or before November 30, 2018.

Following SBP’s delivery of possession of the Property to UCF, UCF’s intended use of the Property remains consistent with the presentation made by UCF to the BCC at its January 23, 2018 meeting – including use of a substantial portion of the Facilities by the UCF College of Medicine for cancer research, as well as anticipated material long-term subleases to Provision Healthcare and the Sarah Cannon Research Institute. Representatives from UCF will be present at the BCC’s meeting on August 21, 2018 to elaborate further on UCF’s plans.

Although DSO may prepay without penalty at any time, the \$50,000,000 transfer price is scheduled to be paid by DSO to County in quarterly installments over a period of 30 years – at an annualized rate of \$2,000,000 per year for the first 20 years and of \$1,000,000 per year for the last 10 years. DSO’s obligations will be secured by a mortgage on the Property. Funds for DSO to make its scheduled payments to County will come from rent paid to DSO by UCF under the Master Lease. Upon receipt of any payment from DSO, County will distribute the payment to each of the Funding Parties in accordance with their respective shares set forth in the Restated FPA (discussed below).

City is expected to take action on this transaction at the Orlando City Council meeting on Monday, August 20, 2018. Following consideration of this matter by the BCC at its meeting during the morning of Tuesday, August 21, 2018, the University of Central Florida Board of Trustees is expected to meet and take action on this transaction in the afternoon of Tuesday, August 21, 2018. The board of directors of SBP is expected to meet and take action on this transaction on Friday, August 24, 2018.

### **Legal Documents**

Those legal documents that are both necessary for the above described transaction and which require the approval of the BCC are summarized as follows:

**Termination and Release Agreement (SBP – Funding Parties) (“SBP Release”)** – This is an agreement among SBP and the Funding Parties, with a limited joinder from Lake Nona Property Holdings, LLC, (“**LNPH**”) pursuant to which SBP and the Funding Parties are agreeing, subject to the conditions of the SBP Release, to terminate and release each other from the obligations of the following documents dated March 6, 2007, each of which relate to the original economic development and incentive transaction between the Funding Parties and SBP: (i) “Grant Agreement” among SBP and the Funding Parties (the “**Grant Agreement**”); (ii) “Gift Agreement (Surplus Land)” among SBP, LNL, and others; (iii) “Gift Agreement (Permanent Facilities)” among SBP, County, LNL, and others; and (iv) “Ground Lease Agreement” between County and SBP (the “**SBP Ground Lease**”). Notwithstanding such termination and release, SBP has agreed to indemnify UCF and the Funding Parties, up to the limits of SBP’s applicable insurance policies, for certain environmental claims reported before December 31, 2021. The SBP Release also: (i) provides for the distribution to the Funding Parties of the

approximately \$814,000 remaining in escrow pursuant to the "Escrow Agreement" dated March 6, 2007, among SBP, the Funding Parties, and the Orange County Comptroller (the "**Escrow Agreement**"); and (ii) addresses the conveyance, from SBP to County, of the Facilities and certain fixtures and equipment.

Special Warranty Deed for Improvements ("SBP Deed") – Pursuant to the SBP Release, this instrument will be executed by SBP in favor of County and recorded to convey ownership of the Facilities to County.

Termination of Memorandum of Ground Lease ("Termination of Ground Lease Memorandum") – Related to the termination of the SBP Ground Lease, this instrument is being executed by County and SBP and recorded to terminate the "Memorandum of Ground Lease" that was executed and recorded by County and SBP in 2007 to provide constructive notice of the SBP Ground Lease and SBP's interest in the Site.

Termination and Release of Primary Leasehold Mortgage and Security Agreement ("Termination of Leasehold Mortgage") – In order to secure SBP's obligations under the Grant Agreement and the SBP Ground Lease, SBP and the Funding Parties recorded a "Primary Leasehold Mortgage and Security Agreement" against the Property in 2007 (the "**Leasehold Mortgage**"). Related to the Funding Parties' release of SBP from those obligations pursuant to the SBP Release, the Funding Parties are executing and recording this instrument to release the lien of the Leasehold Mortgage.

Transfer Agreement ("Transfer Agreement") – This instrument between DSO and County, with limited joinders from City and LNLCC, is the primary agreement describing the process for the conveyance of the Property from County to DSO and attaches the agreed upon forms of County Deed, Note, Mortgage, County UCC, State UCC, Termination of Easements, and Termination of Access License (as each such instrument is defined and described below). In addition to setting forth the \$50,000,000 transfer price, obligating DSO to pay all costs associated with the conveyance, and establishing the timetable for the transfer as described above, this instrument also: (i) establishes that the transfer of the Property to DSO is "as-is, where-is, with all faults"; (ii) obligates DSO to enter into the Master Lease with UCF and prohibits DSO's consent to any termination, assignment, or modification of the Master Lease without County's consent; (iii) addresses certain title matters and provides for issuance of a loan policy of title insurance in favor of County; and (iv) conditions the Transfer Agreement on SBP's execution of and compliance with the SBP Release.

County Deed ("County Deed") – Pursuant to the Transfer Agreement, this instrument will be executed by County in favor of DSO and recorded to convey ownership of the Property to DSO. Use of the Property is limited to the uses described in the County Deed, (the "**Permissible Uses**") unless otherwise consented to by LNLCC. In the event that DSO (or its successor) elects to sell the Property to any person other than UCF, or another affiliate or direct support organization of UCF, (a "**Permitted Transferee**") the Funding Parties have a right of first refusal ("**ROFR**") to purchase the Property on the terms set forth in the County Deed. However, in the event that DSO (or a Permitted Transferee) actually sells the Property to a non-Permitted Transferee within

40 years after the transfer of the Property to DSO, then half of any amount by which the sales price exceeds \$50,000,000 must be remitted by DSO (or its successor) to County (for distribution among the Funding Parties).

Promissory Note ("Note") – This instrument is being executed by DSO and delivered to County to obligate DSO to pay to County (for distribution among the Funding Parties), on a non-recourse and interest-free basis, \$50,000,000 pursuant to the payment schedule described above. The first payment under the Note shall be made by DSO to County on the first day of the calendar month following the earlier to occur of (i) the date that is five (5) days after DSO's tenant, UCF, pursuant to the Master Lease begins receiving rent payments from two (2) anchor subtenants, or (ii) the date which is the earlier to occur of (A) two (2) years after UCF takes occupancy of the Property, or (B) November 30, 2020. A late fee of 5% may be charged on any payments that are more than 15 days late, and interest may accrue at the maximum rate allowable under Florida law following an event of default.

Mortgage ("Mortgage") – This instrument is being executed by DSO in favor of County and recorded to secure DSO's obligations under the Note and the Mortgage with a first lien and mortgage on the Property.

State of Florida Uniform Commercial Code Financing Statement Form (County) ("County UCC") – This instrument will be recorded in the Public Records to secure DSO's obligations under the Note and the Mortgage with a first lien on those fixtures and building systems equipment that SBP is transferring to County pursuant to the SBP Release, and which County, in turn, is transferring to DSO pursuant to the Transfer Agreement.

State of Florida Uniform Commercial Code Financing Statement Form (State) ("State UCC") – This instrument will be filed in the Florida Secured Transaction Registry; it is substantively the same as the County UCC, but for legal reasons the State UCC will be filed in such registry in addition to the County UCC being recorded.

Release of Use Restriction and Reverter ("LNLC Release") – The 2007 special warranty deed by which LNLC conveyed the Site to County contained provisions limiting the permissible uses at the Site and contained a reverter clause that provided a means by which LNLC could regain ownership of the Site following a termination of the SBP Ground Lease and satisfaction of certain provisions (including payment to City and County of certain sums). This instrument which is being executed by LNLC and recorded terminates and releases those rights in favor of LNLC, which termination is necessary to allow the conveyance of the Property to DSO.

Release and Termination of Easement Agreements ("Termination of Easements") – At the time LNLC conveyed the Site to County in 2007, County and LNLC and/or its affiliates entered into a series of easement agreements – some of which were necessary to support the construction and use of the Facilities on the Site, and some of which provided easements on the Site necessary for LNLC and/or its affiliates to develop surrounding properties. Based on the construction of the Facilities, other development in the vicinity of the Site, and/or the passage of time, a number of these easement agreements are no longer necessary or have expired by their own terms. This

instrument will be executed by County, LNLC, and Lake Nona Boggy Creek, LLC, with a joinder from Boggy Creek Improvement District, and recorded to confirm that five temporary easement agreements recorded in 2007 are terminated.

Termination of Access License Agreement (Permanent Facilities) (“Termination of Access License”) – At the time LNLC conveyed the Site to County in 2007, County, SBP, and LNLC entered into an “Access License Agreement” (the “**License Agreement**”) by which LNLC provided alternative access to the Site pending completion of permanent roadway facilities which LNLC and/or its affiliates were obligated to construct. As such roadways have since been constructed, this instrument will be executed by County, SBP, and LNLC to confirm that such License Agreement has terminated.

Amended and Restated Funding Parties Agreement (“Restated FPA”) – In 2007, the Funding Parties entered into a “Funding Parties Agreement” (the “**Original FPA**”) to address the relationship of the Funding Parties relative to each other, as they collectively entered into certain agreements with SBP. Key provisions included how each party’s proportionate share of benefits and liabilities as to the Property would be determined, how costs and expenses would be funded by the Funding Parties, how the Funding Parties would jointly exercise certain rights under the SBP Ground Lease, and how the Property could be disposed of in the event disposition became necessary. Inasmuch as some obligations of the Original FPA have since been performed and as other provisions have been rendered moot by the passage of time and the restructured deal with DSO and UCF, the Funding Parties are entering into the Restated FPA to amend the Original FPA in its entirety and streamline its provisions. The key provisions of the Restated FPA: (i) establish the proportionate shares of the Funding Parties going forward; (ii) specify that certain material actions under the Note and Mortgage require the consent of all Funding Parties; (iii) place limitations on LNLC’s right to consent to variance from the Permissible Uses established by the County Deed; (iv) contain additional provisions for the distribution to the Funding Parties of the approximately \$814,000 remaining in escrow pursuant to the Escrow Agreement; and (v) establish a process for Funding Party decision making under the Restated FPA, including delegation of authority to the County Administrator to act on County’s behalf.

Termination of Memorandum of Funding Parties Agreement (“Termination of FPA Memorandum”) – At the time the Funding Parties entered into the Original FPA in 2007, the Funding Parties also executed and recorded a “Memorandum of Funding Parties Agreement” (the “**FPA Memorandum**”) to provide constructive notice of the Original FPA and the Funding Parties’ respective interests in the Property. Based on the nature of the Restated FPA, it is not necessary to have a recorded memorandum of the Restated FPA to secure the Funding Parties’ interests. This instrument will be executed by the Funding Parties and recorded to terminate the FPA Memorandum.

The backup documentation for this item has been delivered under separate cover. It may also be accessed online as part of eAgenda by clicking [here](#).

**Action Requested**

Approval and execution of documents related to the conveyance of the Sanford Burnham Prebys Medical Discovery Institute's facilities at Lake Nona to the University Central Florida:

Termination and Release Agreement (SBP – Funding Parties);  
Termination of Memorandum of Ground Lease;  
Termination and Release of Primary Leasehold Mortgage and Security Agreement;  
Transfer Agreement;  
County Deed;  
Release and Termination of Easement Agreements;  
Termination of Access License Agreement (Permanent Facilities);  
Amended and Restated Funding Parties Agreement; and  
Termination of Memorandum of Funding Parties Agreement;

Approval of:

Special Warranty Deed for Improvements;  
Promissory Note;  
Mortgage;  
State of Florida Uniform Commercial Code Financing Statement Form (County);  
State of Florida Uniform Commercial Code Financing Statement Form (State); and  
Release of Use Restriction and Reverter;

Authorization to record instruments for:

Delegation of authority to the Manager of the Real Estate Management Division or designee to perform all actions necessary and incidental to the transfer of the Property pursuant to the Transfer Agreement, including authority to furnish and execute any notices or instruments required or allowed under the Transfer Agreement and to insert the transfer date into any of the foregoing instruments requiring the insertion of an effective date; and

Delegation of authority to the County Administrator or designee to do all other things necessary and incidental for the performance of County obligations under the foregoing instruments.