Lobo Development Corporation Board of Directors

Minutes of the November 15, 2012 Annual Meeting of the Board of Directors

Board Members Present: James H. Koch, Chair, Don L. Chalmers, Vice Chair (via conference call), Steven R. Beffort, Dr. Robert G. Frank, Paul Krebs, Louis C. Abruzzo, Maria Griego-Raby

Board Members Absent: Stephen J. Ciepiela

Also present: Kim Murphy, Associate Vice President, Amy Coburn, Keelie Garcia, Joshua Rogers, Gloria Muniz-Chavarria, Chris Vallejos, Lisa Marbury, Tom Neale, Bob Doran, Karen Wentworth, Diane Anderson, Andrew Cullen, Adam Fishman, John Salazar, Bob Goodman, Eric Louttit, Mark Siegel

MINUTES

I. Call to Order
   a. James H. Koch, Chair, called the meeting to order at 10:30 am in the Science & Technology Park Conference Room, 851 University Blvd. SE, Suite 201, Albuquerque, NM.

   b. Chairman Koch established that a quorum was present.

II. Approval of 08/30/12 Minutes
   a. Motion to approve 08/30/12 Minutes made by David Harris, with a second by Dr. Paul Roth. All agreed.

   b. RESOLVED: The Board unanimously approved the August 30, 2012 Meeting Minutes as presented.

III. Financial Reports
   a. Steve Beffort provided an update through September 2012.

   b. The enclosed financial reports show the status for the first quarter of FY 2012-13. Income for the quarter was $307,109, expenses of $680,840, which is a net loss of ($373,731). Compass Bank cash balance is $40,220 and UNM cash account is $814,232. Also within the documents are a Balance Sheet and a P&L that explain all the individual elements. The major factor that you will see in the P&L that is included is that there were major project expenses this quarter of $569,016 and of that $433,000 was Gibson infrastructure in support of the building of the fire station and that initial phase. As you look at the statements, it outlines specifics of those elements.

   c. As requested at the last Board meeting, there is an operating budget detail spreadsheet.

   d. Vice Chair Don Chalmers pointed out that the line item for salary and benefits is fairly constant.

   e. No other comments or questions.

IV. Next Meeting
   a. Regularly scheduled date is December 20, 2012. Mr. Beffort mentioned that there is a question as to whether or not that proximity to the holidays was problematic. Chair Koch asked if there will be anything to discuss. Mr. Kim Murphy responded that there will not be any specific items for approval.
There may be progress reports but it is not anticipated that there will be any critical items to discuss. Chair Koch explained that if there will not be any pressing items, the meeting can be canceled.

b. Everyone agreed with canceling the December 20, 2012 meeting.

V. Commercial Development update - Master Development Agreement with Fairmount Properties

a. Chair Koch announced that Adam Fishman of Fairmount Properties is present. The Board is very pleased that he came to visit and commented on how much the Board appreciates how diligently he is working with the University to help develop this plan for the South Campus. John Salazar will make a brief report then Mr. Fishman will address the Board.

b. Mr. Kim Murphy asked to make a few introductory remarks. Adam Fishman was recognized and he wanted to recognize our advisors from Forest City, Eric Louttit and Mark Siegel, who have participated in advising on this specific transaction as well as a couple of other items that we will consider in Executive Session. The Master Development Agreement (MDA) is an important milestone in the goal to bring commercial development to the South Campus. The Agreement was specified as an outcome in the Letter of Intent that LDC entered into with Fairmount in May 2012. The MDA is a relationship document between the Regents as the owner of the property, LDC as an agent for the Regents in this transaction, and Fairmount as its developer. It is a road map for approving specific development projects and directing the negotiation of ground leases for specific sites on South Campus. The MDA is an important reflection of UNM’s commitment to Fairmount as our South Campus developer and their commitment to openness and transparency in its dealings with the University. The MDA provides, among other requirements, that UNM and Fairmount negotiate a form of a ground lease within 60 days. Mr. Salazar will refer to this as an important provision of the Agreement as well. He commented on one of the major benefits of moving this Master Development Agreement forward at this time, which is that it allows Fairmount to begin negotiations with some of the major commercial users that they have identified as cornerstones of our commercial development on South Campus. John Salazar will go over some of the highlights of the Agreement.

c. Mr. John Salazar explained that this is an approach to the retail restaurant development on the South Campus and it is a two step process. The first step is the Master Development Agreement which the Board has in front of them. It is a process document; it is not the deal that will be negotiated separately, but is the framework within which we will proceed on the development of all three parcels on the South Campus. Once this is approved by LDC and the Regents, then there will be ground leases for the various parcels and possibly sub-parcels depending on the size of the property on the area of South Campus that Fairmount is dealing with. That is where the economics of the deal will be dealt with; what the University gets, how it participates, what it puts in, what Fairmount does. That will define the relationships from which the economics will flow.

Regarding the Master Development Agreement, Mr. Salazar explained the highlights and offered to answer questions. As previously mentioned, it is a process document and which starts with the predevelopment phase. Exhibit A to the document shows the parcels that are being discussed. There are
three parcels. Parcel 1 is a four-acre parcel right on Avenida Cesar Chavez and the AMAFCA channel. Parcel 2 is on Avenida Cesar Chavez and is the two-acre restaurant pad that is just west of the Pit. Parcel 3, which is the big parcel, is approximately 40-acres, exclusive of right of way, which is immediately south of the south property line of the Sunshine Terrace lots. Those are the properties that will be discussed going forward and that this document sets up the process for.

In Exhibit B, there are site plans for two of the parcels. There is a preliminary site plan for Parcel 1, the four-acre parcel at Cesar Chavez and the diversion channel. On page two of Exhibit B, there is a site plan for what would be Parcel 3, the big parcel. This Agreement has deadlines by which they must proceed to substantially complete each of the parcels. Those deadlines run from the execution of the ground lease. For Parcel 1, from the execution of the ground lease, it’s 24 months; Parcel 2, the restaurant site, is 30 months, and Parcel 3 has two time frames because it is bigger and more complicated, the shopping center component has 36 months from the execution of the ground lease. In addition to where the big anchor tenant is and the sub-anchors, there are other parcels for pads and those have to be developed from ground lease by the end of the exclusionary period.

To go forward, they submit preliminary materials. This is to make sure the University is satisfied with what they want to develop, not just the economics to the deal, but what it will look like, how it will fit together. How the Regents will approve the parcels: once Fairmount is ready, they indicate to the University that they are ready to go and they submit preliminary materials which will be considered by LDC and approved by the Regents. Those include plans for the project, the schedule, and the budget, which are collectively called the “preliminary materials.” Once the Regents approve the preliminary materials after they have been vetted by LDC, Fairmount starts to work on the final materials for the project. That is when we get into the development phase and the ground lease. Then Fairmount commences work on the final materials, which again are finalized in the plan and specs for the project, the budget, and the schedule, which are collectively the “final materials.” In order to make sure things move along and Fairmount has some comfort, and the Regents have approved the preliminary materials, the final materials are submitted and if they are consistent with the preliminary materials, Fairmount is entitled to an approval. The preliminary materials are very, very important in this process. After that, as long as they are consistent with it, even though they are fine tuning it, they are entitled to approvals.

Regarding the ground lease, which is step two in this process, the MDA provides that within 60 days of the execution of the MDA by the University, which would be following approval by the Regents, we need to have the form of ground lease. It will be a form of ground lease for Phase 3, the big parcel. The form of the ground lease will be approved and be attached to the MDA as Exhibit I, which is just a blank page right now. Since that will be the toughest form of ground lease because it is the largest and has a lot of complicated aspects, then that will be the forms for Parcels 1 and 2. This has to be done within 60 days of approval of the MDA.

There is an exclusivity provision. Because Fairmount is putting a lot of effort, time, and money into it in order to make this work in terms of the big master plan development, they need to have some
assurance that they will have the exclusive right to develop these three parcels for a five-year period from the effective date of the first ground lease execution as to each parcel. They will have five years to get it done. Also, in that regard, since the University does have adjacent lands, Fairmount has requested, and the University has considered reasonable, that there be a covenant not to compete. The University may not compete with retail-oriented uses up against Fairmount during the exclusivity period and that non-compete area is shown on Exhibit F on the MDA. It is the property just north of Avenida Cesar Chavez and immediately west of the stadium, between the football stadium and the Pit, there is a parcel along I25 just north of Cesar Chavez, another parcel to the east of the football stadium.

d. Vice Chair Chalmers asked if the non-compete works both ways (if they own property next to UNM’s).

e. Mr. Salazar explained that there is no provision that should Fairmount acquire other properties, other than the parcels that are in the MDA, that they cannot compete with UNM as to those newly acquired properties.

f. Adam Fishman commented that he would certainly be open minded to agreeing that should Fairmount take an ownership position in any land other than these lands, they would do it in full cooperation with the University where they could be prohibited from doing so. He has no interest in competing with ourselves and UNM on this piece of land.

g. Mr. Salazar explained a related item that has been discussed is that should the University have other parcels it might like to develop for retail uses; it would be willing to talk to Fairmount about the possibility of letting Fairmount work on those parcels.

h. Vice Chair Chalmers commented that he agrees and believes this is how the Board feels right now.

i. Salazar – we will add language along the lines of your suggestion Regent Chalmers.

j. Chair Koch stated that Mr. Salazar and Mr. Fishman are to meet to add that language.

k. Mr. Fishman began by thanking the Board for the opportunity to be here today. He went on to explain that this is an important milestone for Fairmount Properties and I think the first formal step in a process that’s going to lead to a very mutually beneficial and rewarding relationship with the University. He has gotten to know many of the members and officers over the course of the last year or so. Developing in and around, in conjunction with colleges and universities, is really the primary focus of Fairmount Properties. These three sites provide what we believe is an opportunity to create greater connectivity of the South Campus to the Central Campus, to create a profitable business relationship between the University and the private sector, and to add much needed retail services to an area that’s significantly underserved. He offered to answer any questions specifically about the development itself or the document. This milestone is a critical step for us to continue the process we have already started of trying to attract tenants/merchants to this trade area. It’s important that we take this step in a timely fashion so it can continue to make progress going forward. Lastly, our experience working with this
Board, your staff, the Regents, and the many professionals you have surrounded yourselves with, demonstrates the collaboration of working toward a common set of goals and themes. That’s how we enjoy doing business so we are really looking forward to this opportunity going forward.

1. Chair Koch asked the Board for comments.

m. President Frank agreed that this is a great first step. He would like to move quickly into moving this Agreement along so that we can begin development. Fairmount is a great company and I know them from my Kent State days. I’ve seen what they are capable of and have seen two projects they have done; a classroom building on one of the regional campuses and the downtown Kent project, both of which are now at fruition. They are spectacular so I want this done, I want to see the South Campus developed so let’s get going and be done.

n. Ms. Maria Griego-Raby thanked Mr. Fishman for being attending. She stated that she appreciated the comments about the area being underserved and obviously it appears that the staff and other individuals have done their due diligence. She asked Mr. Fishman, when he commented that it’s an underserved area, in terms of the development, you are looking at serving what…the greater community, the University community, the athletic community? When you look at this development how do you address the larger community? How does this become vibrant and long term as the community grows and evolves?

o. Mr. Fishman commented that he appreciated the questions. He went on to explain that it’s not a simple site from that standpoint. Remember, there are three different sites. The site next to the Pit is going to address the specific needs associated with folks who are enjoying the three sporting venues, the community and members of the University of New Mexico community, with an opportunity that we hope to be restaurant, dining, and fun. The four-acre site that is adjacent to Lobo Village we see as a site that will address the needs of the more immediate community, the University community, with some much needed retail that is more oriented towards dining and service. The bigger site is the most interesting opportunity of all. We hope to accomplish a few different things on that site. There is a significant supply deficit, which means there is more consumer dollars in this trade area than there are places for consumers to spend them. There is a supply deficit certainly in category-oriented retailing. This site is big enough to support a way to meet that supply deficit. There is also a significant supply deficit in both causal, slightly better than casual, and fast casual dining. That’s evidenced by the several quality restaurants in the neighborhood that are at volumes that you typically don’t see in trade areas with this biography. There is pent up demand for those kinds of opportunities. The centerpiece of that development we hope to be a set of shops that could max up to more than one story; two stories that have more of a village like feel that will attract people from the regions. We want it to be a regional destination, but at the same time we want to address the needs of the University community and particularly the game day needs. It is not a simple question, and I’m not giving you a particularly simple answer and I apologize, but none-the-less, it is something that we are taking very, very seriously because we are trying to do a lot of things and reach a lot of different constituencies.
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p. Ms. Griego-Raby appreciated his candidness, however in order for it to be a sustainable section of our community it needs to meet the needs of yes the students, and yes game day, but it needs to really go beyond that. She suggested that they look at the neighborhood because she would hate for them to come back to us and say “you come in and develop all this and it’s nothing that any of us can use or have access to or is relevant. It’s just game day and students nine months a year. The rest of the time it’s dead.” So, in order for it to be sustainable, she requested that they you look at ‘larger and longer’.

q. Mr. Fishman responded that they entirely agree.

r. Mr. Paul Krebs did not have any questions about the proposal or plan from the larger, institutional standpoint, but voiced a concern about the speed of traffic going down Cesar Chavez and into one of the restaurants. Particularly with people located in the Research Park and pedestrian foot traffic. How are people going to cross the road? There are larger transportational issues that, as we develop this area, we will need help with from the City in terms of managing pedestrian traffic and managing the speed of which people go down that road.

s. President Frank agreed that this is a really important point. Not just the speed, but the education of the security and police force that bring people in and out of our events there. That’s another day’s issue but I think it is a really big issue.

t. Dr. Paul Roth stated that he thinks this is a great opportunity for Lobo Development and for the University and he completely supports it. The only area of discussion that he would like to bring up at some point is a process initiative relating to the mission of Lobo Development and the interaction with Regents, asset acquisition, that type of thing. As it relates to this particular agreement, he thinks this is outstanding.

u. Mr. Louis Abruzzo complimented Mr. Salazar, Mr. Fishman, Chair Koch, and all the others involved in putting the MDA. It is very intricate, detailed, and well thought out. Mr. Salazar pointed out earlier how important the preliminary materials are in getting the process moving. On Page 7 he noted that there are protections built in for Lobo Development. This is a risky endeavor and we have had some rough economic times but hopefully the time is right for this to finally move forward. He noted that there are protections built in on the costs, out of pocket costs, and Fairmount obviously has to have great vision and positive outlook on moving forward with this. When the preliminary materials come up and if we are not in agreement, then we can have some cause to think. As long as they are doing their job and we all get along, this will move forward and we won’t have those upfront costs.

v. Dr. Roth asked Mr. Fishman, assuming that everything moves along at the rate that we would anticipate, how long would you envision the doors opening to an operation in any of these properties?

w. Mr. Fishman responded by saying that he does not ever assume that things are going to move along at any particular pace. What we don’t know, we don’t know in our business. We have not done any physical due diligence on the site. We had to get through this piece first, so there are all kinds of things
that could come up in terms of soil condition, urban archaeology, and who knows what else will be found when you start to dig around. We are very motivated because in our business all we do is spend money until we get projects open. We don’t actually make money until we are actively shoveling the ground and actively in the development process so we couldn’t be more motivated. It would be my first choice to have a meaningful portion of this project under construction in 2013. Dependent upon the complexity of the build, this project is probably a 12-18 month build.

Mr. David Harris stated that if you take the long view of what we have done to get to this point today, we really started with trying to find a master developer even before the Research Park Act was expanded and we have not had the kind of luck that we would have hoped for. Of course the whole finance world changed over the last four years, so I feel really fortunate that it’s come to this point, but I think as President Frank said, hopefully we can pick up the pace now.

Chair Koch asked Eric Louttit to introduce himself. He is with Forest City Real Estate Services and has been engaged by Lobo Development to assist in the process of locating a master developer, getting to the point where we are today, further through the ground lease, through development, ultimately to when the doors open. He commented that they have worked pretty hard over the last year to get this document put together. They worked along with Kim, Amy, John, and Adam and it is a very strong document. It has a lot of protections for the University and yet still allows the developer to have a process laid out that they can rely on so when they go to market and begin to look for tenants, they know what the deal is and they know how they need to move forward. This a really important day to get this document approved and it really gives Adam the freedom to go out and begin to put together deals with tenants that will ultimately be selling their merchandise on this site. I think, from my point of view, we are in a pretty good place right now.

When asked by Chair Koch if he had any additional comments, Vice Chair Chalmers stated that he fully supports the document. He explained that he has reviewed the document with the help of John Salazar and is very satisfied that it is a wonderful document. Obviously this is very important to the University to create an income stream from the properties to service the bond debts. Again, he supports it and hopes it can be moved forward today.

Chair Koch addressed the Board with a few comments. First of all, people at Lobo Development know the problem we had first with ACC in Lobo Village which had to get built and took us a long time to come to. We agreed to try to develop the South Campus. Since I have been on the Regents, when we went through the process of selecting a developer and all of you were involved in that, we had many good developers and selected Fairmount. We made a very wise selection. We did go around to the community and we did poll the community and the neighborhoods. We know the neighborhoods are in support of what we are trying to do. We did do the surveys on that, we did not drop that portion; they know what it is going to be so we’ve got one part of the step. The only problem is when you’re dealing with the University, things move at a snail’s pace but maybe with our new President we can get it done quickly. But this first document is very important and I appreciate all the efforts John and Kim and Steve of going through it. The attorneys have had a great deal of fun with this (our attorneys, too, because we
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got our attorneys to go through it). I’ve read through this thing so many times and I’ll be glad when we get it approved. The next step is that we will ask to move this on to Finance and Facilities. Obviously Don has been completely informed and Mr. Gallegos has been informed on what the language is so that now, hopefully, we can do it quickly and go to the next phase of what kind of return we can get.

bb. Chair Koch asked for a motion to approve and send the Master Development Agreement on to Finance and Facilities. Motion from Vice Chair Don Chalmers with a second from Steve Beffort. No discussion. All in favor.

cc. Vice Chair Chalmers requested that Kim Murphy create a timeline of key times and key milestones for the Lobo Development Directors as well as the Regents. It could be a flowchart that would follow the MDA. It would be helpful because as time passes, we will forget exactly what is in this document and having a simple flowchart might help.

dd. Chair Koch stated that Mr. Murphy will provide a flowchart and the Board should have that flowchart before it goes to Finance and Facilities so that flowchart can be discussed at Finance and Facilities.

ee. **RESOLVED:** The Board unanimously approved the Master Development Agreement and to forward the Agreement on to the Regents’ Finance and Facilities Committee.

**Executive Session**

1. Chair Koch requested a motion to close the meeting and proceed in Executive Session. Motion made by Maria Griego-Raby with a second by Dr. Robert Frank. All in favor. Meeting was closed at 11:30 pm.

2. Discussion and determination, where appropriate of potential purchase, acquisition or disposal of real property pursuant to Section 10-15-1H(8), NMSA (1978).

3. Discussion and determination, where appropriate, of limited personnel matters pursuant to Section 10-15-1H(2), NMSA (1978).

4. Steve Beffort made a motion to reopen the meeting, with a second by Louis Abruzzo. All in favor. Meeting was reopened at 12:35 pm.

Certification that only those matters described in Item 2 and 3 above were discussed in executive session and, if necessary, ratification of actions, if any, taken in executive session.

VI. **Adjournment**

a. Meeting adjourned by Chair Koch at 12:35 pm.

Minutes prepared from recording by Keelie Garcia.

Approved by Board of Directors: 02/28/13

Steven R. Beffort, Secretary/Treasurer