

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR BOARD ACTION**

**NO.:** BHE 23-49

**DATE:** May 9, 2023

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**MOTION TO ASSIGN AND CONFIRM RIGHT, TITLE, AND REVERSIONARY INTEREST IN PROPERTY TO THE COMMONWEALTH OF MASSACHUSETTS BY AND THROUGH ITS DIVISION OF CAPITAL MANAGEMENT AND MAINTENANCE ON BEHALF OF MIDDLESEX COMMUNITY COLLEGE**

**MOVED:** The Board of Higher Education (Board) hereby recognizes and acts upon the request from Middlesex Community College (MCC) and the Division of Capital Asset Management and Maintenance for the Commonwealth of Massachusetts (DCAMM- f/k/a Division of Capital Planning and Operations) to memorialize and confirm ownership of certain parcels of land, and buildings and structures, identified hereto in Exhibit B (the "Premises") following the full payment of Allocable Bonds referenced herein, and hereby votes as follows.

The Board hereby:

1. assigns and releases to MCC all of its right, title and reversionary interests to (i) that certain Deed recorded on April 13, 1992 with the Middlesex County, Northern District, Registry of Deed (the "Registry") in Book 5891, Page 309 (the "First Deed"- Exhibit D), (ii) that certain Deed recorded on April 1, 1998 with the Registry in Book 9177, Page 90 (the "Second Deed"-Exhibit E and together with the First Deed, the "Deeds") and any other interest, if any, to the Premises, provided that, MCC (or the Commonwealth of Massachusetts, acting by and through DCAMM on behalf of Middlesex Community College) assumes in writing all of the Board's right, title and reversionary interest and any other interest, if any, in the Premises; and

2. authorizes and consents to the Massachusetts Development Finance Agency (as successor to HEFA) taking all actions, and entering into all documents and instruments, necessary to effectuate the transfer of the Premises to MCC.

Upon the advice of counsel to the Board, the Board further authorizes and delegates to the Commissioner the authority to take all actions and enter into all documents and instruments necessary or desirable to effectuate the foregoing Votes, including, without limitation, executing an assignment, assumption and release agreement in recordable form.

**VOTED:** Motion adopted by the BHE on 5/9/2023.

Authority: Massachusetts General Laws Chapter 15A, Sections 6, 9(m) and 10-14

Contact: Joe Wallerstein, Interim Deputy Commissioner for Administration and Finance  
Constantia T. Papanikolaou, Chief Legal Counsel

## Background

At its June 1991 meeting, the Board of Higher Education (then referred to as the Board of Regents and referred to hereinafter as the "Board") gave approval to employ Massachusetts Higher Education Facilities Authority ("HEFA") bonding to support development of a new 60,000 square foot Health, Science and Technology Center by Middlesex Community College ("MCC") at the Lowell Campus (the "Center") as part of the school's master plan for future development. *See Exhibit A, AF-192-91 and A&F 92-1.* Consisting of new laboratories, classrooms, and clinics, the Center aimed to address a pressing need at the time for permanent and modern facilities for health and science education "better reflecting the ongoing technical advances in these fields."

To offset the estimated \$7 million cost of construction at the time, the Board authorized a 20-year term HEFA bond with an annual debt service of \$650,000. On October 15, 1991, the Board resolved that HEFA<sup>1</sup> would undertake the project and delegated to the Commissioner (called a "Chancellor" at that time), the authority to take all necessary or desirable steps to advance the project and execute the necessary documents with HEFA. *Exhibit A, A&F 92-1.*

To effectuate the transaction, the Commonwealth's Division of Capital Planning and Operations (n/k/a Division of Capital Asset Management and Maintenance "DCAMM") was then authorized to acquire real property for the Center in Lowell, MA by eminent domain and with the approval of the Board by Section 42 of Chapter 208 of the Acts of 1988. The Board provided its approval of the taking by DCAMM by vote on February 18, 1992. The property taken and developed for this project is described *Exhibit B*, and hereinafter is referred to as "the Premises."

On April 9, 1992, the Commonwealth, acting through DCAMM, issued an Order of Taking for the Premises described therein. *See Order of Taking, attached hereto as Exhibit C.* The Order of Taking states that the Premises was taken in fee simple, pursuant to M.G.L. c. 79, by: "commissioner of the Division of Capital Planning and Operations for the Commonwealth of Massachusetts...having obtained the approval of the Higher Education Coordinating Council... as required by [Section 42 of Chapter 208 of the Acts of 1988]..."<sup>2</sup> The Order of Taking and the Vote were

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<sup>1</sup> HEFA was succeeded by the Massachusetts Development Finance Authority by statutory merger pursuant to Section 188 of Chapter 240 of the Acts of 2010.

<sup>2</sup> The Board is referenced in the Order of Taking insofar as it provided DCAMM with approvals required by c. 208 for exercising eminent domain, and in the Deed insofar as BHE may "convey or lease to HEFA any community college real property" pursuant to c. 15A, Section 11.

recorded on April 13, 1992, in Plan Book 178, Plan 49. Upon effectuating the taking by eminent domain, the Commonwealth, by and through DCAMM on behalf of the Board of Higher Education, deeded the Premises to HEFA, with the condition that "Title to the Parcels shall revert to the Commonwealth of Massachusetts upon maturity of the Allocable Bonds..." See *First Deed, attached hereto as Exhibit D*.

Pursuant to the above-referenced arrangement, development of the Center in 1992 was funded by HEFA's Revenue Bonds Community College Program Issue, Series A (the "Series A Bonds"). Because no legislation existed at the time permitting MCC to borrow funds directly for the Center's construction, HEFA became the nominal owner of the Premises and used the proceeds to construct the Center. The arrangement was and is governed in part by a Contract for Financial Assistance, Management and Services between HEFA, and the Commonwealth acting through the Department of Higher Education and acknowledged by MCC.

The Series A Bonds were subsequently refinanced in full by HEFA's Revenue Refunding Bonds Community College Program Issue, Series B (the "Series B Bonds") in 1998 – this transaction was memorialized by deed recorded in the Middlesex County Registry of Deeds, in which Commissioner of the DCAMM, acting "on behalf of the Board of Higher Education," granted to HEFA the Premises for nominal consideration for the sake of the Series B Bonds, with title to the Premises "reverting to the Commonwealth of Massachusetts upon maturity of the Allocable Bonds... on or before October 1, 2022." See *Second Deed, attached as Exhibit E*. As part of a subsequent Center-related refinancing 2013, the Board further resolved to request the issuance of the Series D to refund its portion of the Series B Bonds from 1998. See *Exhibit A, FAAP 13-39*

The Allocable Bonds matured on October 1, 2022, and in consideration of the Premises' reversion back to the Commonwealth, the Commonwealth (by and through DCAMM) and MCC seek to clarify that the Premises (by assignment) now reverts to the Commonwealth by and through its Division of Capital Asset Management and Maintenance, on behalf of Middlesex Community College. See *Certificate of Payment of Allocable Bonds, attached hereto as Exhibit F*.

In order for the reversion to proceed as such, the Board must assign any and all of its reversionary interests in the Premises to The Commonwealth of Massachusetts, acting by and through its Division of Capital Asset Management and Maintenance on behalf of Middlesex Community College, so that the

applicable interests revert back to the Commonwealth in appropriate form without title defects, pursuant to that certain Assignment and Assumption of Reversionary Interest and Release Agreement attached hereto as *Exhibit G*.

Staff Recommendation

Staff recommendation is for approval. Without approval of this Motion, the ownership of the Premises will revert to The Commonwealth of Massachusetts, acting by and through its Division of Capital Asset Management and Maintenance on behalf of the Board of Higher Education.

The motion is necessary so that the Board has no property interest in the Center, beyond the Board's broad, supervisory authority over all property "real or powers previously exercised" pursuant to M.G.L. c. 15, Section 9. As such a possessory interest would extend beyond the Board's general supervisory authority

Exhibits

*Exhibit A – Past, Relevant BHE Motions (A&F 92-1, AF-192-91, and FAAP 13-39)*

*Exhibit B – Description of the Premises*

*Exhibit C – Order of Taking*

*Exhibit D – First Deed*

*Exhibit E – Second Deed*

*Exhibit F – Certificate of Payment of Allocable Bonds*

*Exhibit G – Assignment and Assumption of Reversionary Interest and Release Agreement*