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FINANCE AND BUDGET COMMITTEE
SEPTEMBER 16, 2009

SUBJECT: DEFEASED LEASING

ACTION: APPROVE RESTRUCTURING OF TEXTRON LIKE KIND EXCHANGE TRANSACTION

RECOMMENDATION

Authorize the Chief Executive Officer and designees to negotiate and execute the documents necessary to restructure the Textron like kind exchange ("LKE") transaction in accordance with the Restructuring Term Sheet, Attachment 1.

RATIONALE

We are in a technical default situation under our like kind exchange defeased lease transaction with Textron Financial Products ("Textron") as a result of the credit rating downgrade of American International Group ("AIG") and the unavailability of an acceptable replacement letter of credit. The proposed restructuring will remedy this situation and allow the transaction to remain in place for the balance of its original term.

In this transaction, AIG provides the defeasance for the lease rents and end-of-term purchase option as well as a letter of credit that insures the payment of liquidated damages in the event that we are in default under the transaction. The restructuring proposal is essentially "self insurance" in the form a funded escrow account that backs up the AIG letter of credit. Textron will waive the current and future credit provisions that led to the technical default noted above. The escrow account will contain cash or acceptable U.S. government securities. An approximate schedule of our collateral requirement over the remaining term of the transaction is shown in Attachment 2. At the successful conclusion of the transaction in approximately 23 years, these funds, including any interest earned on the funds, will be returned to us. Because the federal government is an 80% owner of AIG and AIG is further obligated to collateralize its defeasance obligations under the lease, we feel that our exposure to AIG is manageable.

The assets necessary to fund the escrow account are available from our workers' compensation/general liability self insurance reserves. The reserves totaled approximately $298 million on June 30, 2009. Because this reserve is fully funded and we annually budget additional monies to the reserve at 100% of our estimated annual expense, we believe that the reserve balances will remain sufficient to cover virtually any unforeseen occurrence over the remaining term of the lease.

DISCUSSION

We closed this transaction for the Patsaouras Transit Plaza and parking facility on June 20, 2002. The Plaza and parking facility were valued at $125 million and we received an upfront benefit of $7.2 million.

Last fall, AIG's credit ratings were downgraded below the A2/A (Moodys/Standard & Poors) credit triggers. Failure to successfully replace these credit facilities on a timely basis constitutes an "event of default" under the lease documents. The penalties for default are substantial and could be approximately $18 million for this deal. Our total exposure is approximately $166 million for the seven transactions that are affected by the AIG downgrade.

FINANCIAL IMPACT

Funding of $1,000,000 has been included in the FY10 budget in cost center #0521 and project #100002 for the costs required to maintain and finalize the restructuring of potential leasing transactions.

The $17.5 million deposit into the escrow account has no budget impact and "no cost" because the assets remain our property as long as we remain in compliance with the Textron documents. The deposit will be returned to the workers compensation/general liability reserves after successful conclusion of the lease.

Impact to Bus and Rail Operating and Capital Budget

The sources of funds for the execution of the documents are Prop A, Prop C, and TDA Administrative funds. These funds are not eligible for bus and rail operating and capital expenditures.

ALTERNATIVES CONSIDERED

Textron originally indicated that they wanted to terminate the deal. However, after preliminary negotiations, we determined that their exit price was in excess of the high price of purchasing an acceptable replacement for AIG. This option is not recommended.

We pursued negotiations with a subsidiary of Berkshire Hathaway ("BH") to provide a surety instrument to meet our lease obligation. BH's price amounted to more than $3 million over the remaining life of the transaction. During the course of these discussions, BH's credit ratings were downgraded slightly. Due to the high price and the risk of future BH downgrades that could trigger the problem that we now have with AIG due to credit ratings, this option is not recommended.

BACKGROUND

It is estimated that the major transit agencies across the country executed over $30 billion of these transactions up to 2003 when Congress specifically changed the tax code to make future transactions uneconomic. AIG was a major player in this market and is involved in a substantial percentage of these transactions.

A coalition of these transit agencies was successful in having bills introduced in both the House and the Senate that would impose a 100% excise tax on the tax benefit portion of any liquidated damages received by investors to deter investors who might seek to take advantage of the technical defaults created by the credit downgrade.

We executed 10 defeased lease transactions through 2003 and earned $65 million for our participation. One transaction not involving AIG was terminated in March 2009 at no cost to us other than minor legal expenses.

ATTACHMENTS

1. Restructuring Term Sheet
2. Collateral Requirements

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Chief Financial Services Officer and Treasurer

Arthur T. Leahy
Chief Executive Officer

Attachment 1
Textron Restructuring Term Sheet

1. Custodial Account: MTA will establish a securities custodial account (the "Custodial Account"). MTA will be the beneficial owner of the account but the Custodial Account will be pledged to Textron to secure the "Strip Component" portion of the AIG letter of credit (the "Additional Collateral").

2. Funding of Custodial Account: On the funding date, MTA will be responsible for transferring Acceptable Collateral into the account with a fair market value equal to 104% of the "Strip Component" under the lease (the "Collateral Requirement"). See Attachment 2 for schedule of the remaining Collateral Requirement amounts.

3. Acceptable Collateral: Acceptable Collateral will consist of cash or US government and government agency securities with a remaining maturity of less than five years.

4. Custodial Account Maintenance Requirement: MTA will be required to maintain and post additional collateral (or may withdraw collateral) such that, on a quarterly basis, the aggregate FMV of the Acceptable Collateral is equal to the Collateral Requirement on that date.

5. Existing Textron Collateral: The existing AIG letter of credit and collateralized Payment Undertaking Agreement would remain in place. The posting of Additional Collateral would satisfy MTA's obligations under Section 10.2 of the Participation Agreement to replace the AIG letter of credit.

6. To the extent that AIG's credit rating is restored above the A/A2 threshold level, Textron would release its security interest in the Additional Collateral.

Attachment 2
Collateral Requirements

Date		$ millions
October	2009	17.5
October	2010	17.5
October	2011	17.6
October	2012	17.5
October	2013	17.5
October	2014	17.4
October	2015	17.3
October	2016	17.2
October	2017	16.8
October	2018	16.6
October	2019	16.2
October	2020	15.8
October	2021	15.4
October	2022	14.8
October	2023	14.1
October	2024	13.4
October	2025	12.5
October	2026	11.5
October	2027	10.4
October	2028	9.3
October	2029	7.5
October	2030	4.4
October	2031	2.0
June	2032	0.0