

Attorneys Guide \$400M P3 Venture Bringing New Dorms to LSU

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By: **Lee A. Weintraub, Jennifer Bales Drake**

Although Lee Weintraub graduated from the University of Florida, the Florida Gators were not the only college football team the attorney cheered for. He was also a fan of the Louisiana State University Tigers.

The Fort Lauderdale shareholder with Becker & Poliakoff recently helped LSU — home to his second favorite team — close a \$400 million public-private partnership that will bring much-needed student housing to the Baton Rouge campus.

The partnership is the university's largest-ever development deal. It paves the way for a multiphase project featuring new residence halls, a campus entranceway, stores and parking — “a legacy project for the university,” Weintraub said.

“I am very proud of the project,” he said. “It is unique in so many different ways.”

Weintraub and fellow Fort Lauderdale shareholder Jennifer Bales Drake were instrumental in structuring the complex transaction, which involved negotiating with numerous parties and drafting flexible documents to fit the project's scope.

In the first phase of development, the Nicholson Gateway will create 1,935 beds for students in five residence halls, 38,000 square feet of retail space and a parking garage with 1,525 spaces.

“The need for housing cannot be overstated,” Weintraub said. “They are completely full and bursting at the seams with the residences they have now.”

Groundbreaking is scheduled for November, and the housing will be ready by summer 2019, Bales Drake said.

The lead attorneys on the deal called it “physically transformative” because it will create a new entrance on the back side of the campus, which now lacks a signature entry point.

“Nicholson Gateway develops the last undeveloped major parcel of land on campus in an aesthetic manner that essentially creates a new entranceway to campus,” Weintraub said. “Combined with the retail components included in the project, it now creates a new gateway for people entering campus on Nicholson Drive.”

The attorneys worked on the deal for nine months before closing Sept. 28.

“The numerous layers of entities is what made this a complex transaction,” Bales Drake said.

First of all, two nonprofit organizations were involved.

LSU began the process by leasing the property to the LSU Property Foundation. However, the nonprofit was neither well-capitalized nor experienced enough to handle such a large venture, so the foundation subleased the property to another nonprofit, the Provident Resources Group Inc., which acted under Provident Group-Flagship Properties LLC.

The foundation subleased the property to Provident Resources to take advantage of tax-exempt financing to fund the project through a structure that would also provide seed money for the foundation.

“Typically in P3s, the university leases the land to one private entity, and the private entity is responsible for obtaining the financing, hiring the necessary parties to build the facilities, and once built, the private entity leases the facilities back to the university,” Bales Drake said. “It is completely responsible for setting rents, paying the bond payments and managing and operating the facilities.”

Two More Phases

But this was not a typical P3 agreement.

In this case, Provident Group-Flagship Properties LLC was the pass-through vehicle acting as the borrower to meet tax-exempt requirements. The limited liability company was also used to seal the development and execute operations and management agreements.

When the project is completed, LSU will sublease the land and lease the new facilities as the end user. The university will operate the student portion of the property and collect rent from student residents. LSU will then pay rent to Provident Group-Flagship Properties LLC to make bond payments and pay for all other project costs.

Becker & Poliakoff represented the foundation throughout the entire process. “We were responsible for reviewing the bond documents for purposes of making sure they correctly set forth the terms of the leases and structure of the transaction,” Bales Drake said.

The project will be financed through a combination of taxable and nontaxable bonds. Financing the deal is RBC Capital Markets, with Whitney Bank acting as trustee and the Louisiana bond authority as issuer.

A project committee made up of all the parties — the university, both nonprofits and the facilities manager — will guide the development.

Two additional phases of the project will demolish and rebuild six on-campus residence halls. Due to the deal’s complexity, the university wanted the project documents to be easily reusable for the next two phases.

The attorneys accomplished that by drafting the documents with slightly vague, flexible terms that could be adapted to later phases.

“We had some terms that we had never heard of,” Weintraub said. “It was tough because contracts are supposed to be as specific as you can make them.”

With over 20 years of experience with commercial transactions, Bales Drake is chair of Becker & Poliakoff’s real estate practice group. Weintraub, who helped draft Florida’s public-private partnership legislation that became law in 2013, leads the firm’s P3 practice.