

**WEST VIRGINIA UNIVERSITY**  
**BOARD OF GOVERNORS**

January 27, 2017

The one hundred forty fourth meeting of the West Virginia University Board of Governors (scheduled as a Special Meeting) was held on January 27, 2017 in the Rhododendron Room of the WVU Mountainlair, Morgantown, West Virginia. Board members in attendance/participating by telephone included David Alvarez, Marty Becker, Thomas Flaherty, J. Thomas Jones; Thomas Heywood, Dr. Stanley Hileman, Diane Lewis, Dixie Martinelli, Julie Merow, Taunja Willis Miller, Ed Robinson, J. Robert (J.R.) Rogers, Dr. Richard Turton, and Dr. Kimberly Weaver. Board members, Gregory Babe, Benjamin Statler, and William Wilmoth were absent and excused.

**WVU officers, divisional campus officers, representatives (and others) present included:**

President Gordon Gee;  
Vice President, Legal, Government and Entrepreneurial Engagement, Rob Alsop;  
General Counsel, Stephanie Taylor;  
Provost, Joyce McConnell;  
Vice Provost, John Campbell;  
Vice President for Finance and Administration, Narvel Weese;  
Vice President for University Relations, Sharon Martin;  
Executive Officer and Assistant Board Secretary, Jennifer Fisher;  
Dean of Students, Corey Farris;  
Senior Associate Vice President for Finance, Dan Durbin;  
Associate Vice President for Planning & Treasury Operations, Liz Reynolds;  
Associate Vice President for Facilities and Services, Randy Hudak;  
Assistant Vice President of Finance, Anjali Halabe;  
Director, Planning & Treasury Operations, David Kosslow;  
Special outside counsel, Ellen Cappellanti;  
Director of University Relations/News, John Bolt; and  
Special Assistant to the Board of Governors, Valerie Lopez.

**Members of the press were also present.**

**CALL TO ORDER**

Board member, David Alvarez, opened the meeting by welcoming everyone present and on the telephone. The meeting was then called to order by Board Chairman, Thomas V. Flaherty, (via telephone) at 10:30 a.m. A roll call was taken to determine who was in attendance and a quorum established.

Chairman Flaherty announced that there was no need for an Executive Session during today's Special Meeting.

Chairman Flaherty stated that today's meeting is to review and take action on a proposal to close the Arnold Hall and Apartments at the end of the Spring 2017 academic semester and utilize portions of the south tower of University Place as a residence hall, beginning with the Fall 2017 academic semester. Actions by the Board may include authorization to effectuate amendments to leases and related agreements with West Virginia Campus Housing, LLC and Downtown Campus Parking Associates, LLC; upgrading technology at University Place; and implementing a residence life program for the residence portions of the south tower of University Place; and related authorizations.

Chairman Flaherty then introduced Rob Alsop, Vice President for Legal, Government, and Entrepreneurial Engagement – to present information related to today's meeting topics. A summary of Vice President Alsop's presentation includes the following:

Arnold Hall and Apartments, one of West Virginia University's oldest residential complexes, will close at the end of the current academic year. Vice President Alsop outlined an arrangement with developers of University Place, a public-private partnership, to convert approximately 450 beds on the upper seven floors of the project's south tower, to be named Seneca Hall. Except in very limited circumstances, WVU requires freshman and other new students to live in University residence halls. In addition, several hundred sophomores and other upperclassmen typically opt to live in residence halls. As campus residences, the residence hall floors will be subject to the same regulations and operations as other campus residence halls, including resident assistants and programming. WVU rules regarding alcoholic beverages, access, etc., will also apply. The second and third floors in Seneca Hall, as well as the remainder of the development, will continue as private apartments. The first floor is retail space occupied by a convenience store. The decision is consistent with the intent of the 2012 Student Housing Master Plan. Vice President Alsop acknowledged that it is slightly different from the plan's original timeline regarding Arnold's or other residence halls' future, but added that we are pivoting a little bit in the best interest of the West Virginia University. The shift is appropriate, he noted, because it addresses three issues: 1. Low occupancy at University Place, 2. WVU financial challenges relating to the low occupancy, and 3. A desire to move forward on improving and upgrading the residence hall experience for freshman and upperclassmen desiring to stay in a residence hall.

He added that closing Arnold is the best solution to address these issues because of its age – it was built in 1957, with the apartments added in 1960; its location – like University Place, it is on the downtown campus; and its size – its capacity most closely matches the space in University Place's south tower.

Following a discussion among board members, Chairman Flaherty advised that Board members received as part of today's meeting materials a "Resolution of the West Virginia University Board of Governors to Authorize and Approve the (1) Closure of Arnold Hall and Apartments (2) Use of Portions of University Place as a Residence Hall and (3) Term Sheet and Amendments to University Place Documents Relating to the Same." Chairman Flaherty asked if there was a motion regarding this matter. Board member, David Alvarez, thereupon moved

that the WVU Board of Governors approve the titled Resolution and authorize its execution by our Board Chairman and Secretary, and he further moved that a copy of the approved Resolution (and related documentation) be attached as an addendum to the minutes of this board meeting, to be incorporated herein by reference. The motion was seconded by Diane Lewis and passed by a majority vote of all board members in attendance/participating by telephone. Board member, Taunja Willis Miller, stated for the record that in order to avoid even the appearance of a conflict of interest, she abstained from today's board vote.

Vice President Alsop acknowledged the extraordinary efforts of Vice President Narvel Weese and his team, Provost Joyce McConnell and her team, Vice President Sharon Martin and her team, board members who served on a special subcommittee, plus countless others in making today's board decision possible. President Gee publicly acknowledged the excellent work performed by outside counsel, Ellen Cappellanti, on this matter. President Gordon Gee further noted that housing is not about housing, it is about the experience, and he added that WVU has made a wonderful decision in that we were given a challenge, and we turned the challenge into an opportunity.

### **ADJOURNMENT**

There being no further business to come before the Board, J. Robert (J.R.) Rogers moved to adjourn the meeting. The motion was seconded by David Alvarez, and passed. The meeting was adjourned at 11:25 a.m.

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Diane Lewis, Secretary

**RESOLUTION OF THE WEST VIRGINIA UNIVERSITY  
BOARD OF GOVERNORS TO AUTHORIZE AND APPROVE THE (1) CLOSURE OF  
ARNOLD HALL AND APARTMENTS; (2) USE OF PORTIONS OF UNIVERSITY  
PLACE AS A RESIDENCE HALL; (3) TERM SHEET AND AMENDMENTS TO  
UNIVERSITY PLACE DOCUMENTS RELATING TO THE SAME;**

**WHEREAS:** In 2012, West Virginia University developed a Main Campus Student Housing Master Plan (“Master Plan”);

**WHEREAS:** Pursuant to the Master Plan, WVU entered into three Private Public Partnerships with private parties to develop new student housing;

**WHEREAS:** University Place, one of the new student housing developments, opened in 2014;

**WHEREAS:** WVU leased the land upon which University Place and a related parking garage are now located to developers which constructed a residential apartment and commercial complex and garage on the land and subleased the improved land back to WVU;

**WHEREAS:** WVU manages the operations of the residential apartment complex and the garage;

**WHEREAS:** University Place has been faced with occupancy and financial challenges;

**WHEREAS:** Arnold Hall and Apartments were constructed over fifty years ago and, as noted in the Master Plan, deferred maintenance for Arnold Hall and Apartments now exceeds twenty million dollars;

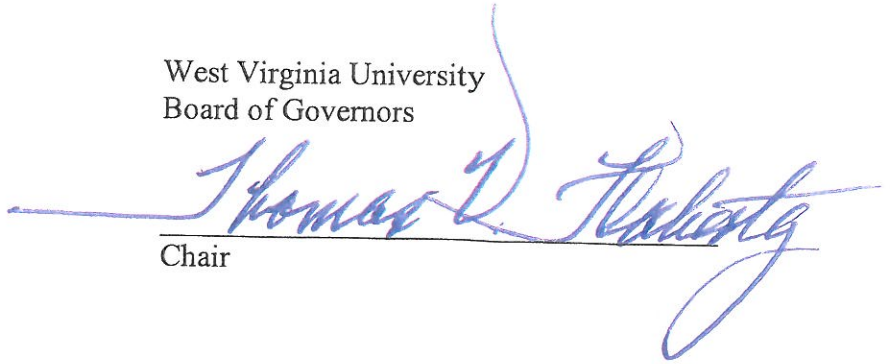
**WHEREAS:** An analysis of student selections for residential housing shows both capacity in the lower rate rooms and popularity of newer facilities;

**WHEREAS:** Closing Arnold Hall and Apartments and converting portions of University Place into a residence hall will provide updated, modern, and attractive amenities to recruit and retain students, solve financial and occupancy challenges at University Place and avoid deferred maintenance expenses for Arnold Hall and Apartments.

**NOW, THEREFORE, BE IT RESOLVED BY THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS** that it authorizes, supports, and approves the closure of Arnold Hall and Apartments at the end of the Spring 2017 academic semester and further authorizes, supports, and approves the Term Sheet attached hereto and authorizes management to take such actions and to enter into such amendments to existing agreements relating to University Place as are necessary to effectuate the Term Sheet; and that University Place south shall be known as “Seneca Hall.”

Adopted this 27th day of January 2017.

West Virginia University  
Board of Governors



Thomas D. Talbot

Chair



Secretary

## UPlace Term Sheet

This UPlace Term Sheet ("Term Sheet") summarizes the principal terms with respect to potential amendments to that certain Lease and Development Agreement between West Virginia University ("WVU") and Paradigm Development Group, LLC, dated October 26, 2012 ("Lease") as assigned to WV Campus Housing, LLC ("WVCH") and related documents, including the Sublease Agreement between WVU and WVCH dated February 28, 2013 (the "WVCH Sublease"), the Joint Operating Agreement between WVU and WVCH and dated February 28, 2013 ("Joint Operating Agreement"), and the Parking Facilities Sublease Agreement between WVU and Downtown Campus Parking Associates, LLC ("DCPA") (WVCH and DCPA are collectively referred to as the "LLCs"), dated October 9, 2014 ("Parking Sublease") (the Lease and related documents are collectively referred to as the "UPlace Agreements").

This Term Sheet is intended solely as a basis for further discussion and is not intended to be and does not constitute a legally binding obligation. No legally binding obligations will be created, implied, or inferred until appropriate amendments to the UPlace Agreements have been authorized by the WVU Board of Governors and are executed and delivered by all parties.

WVU and the LLCs are discussing amendments to the UPlace Agreements based on the following terms:<sup>1</sup>

### SECTION 1: PROPOSED WVU COMMITMENTS

If the LLCs obtain the changes to its various loan documents from its lender ("Bank"), as stated in Section 2; agree to the terms contained in Section 3 relating to the UPlace Agreements with WVU; and agree to the resolution of the FY 2017 deficit as contained in Section 4, then WVU is amenable to the following:

1. WVU will close Arnold Hall after the end of the 2017 spring academic semester;
2. Effective immediately upon execution of this term sheet, WVU will place at least 400 beds in the south tower of University Place ("UPlace South") into

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<sup>1</sup> All dollar amounts are estimates and subject to final verification.

its rotation of available freshman housing beginning with the 2017 fall and spring academic semesters and continuing until June 30, 2025, and WVU will treat the referenced freshmen beds at UPlace South consistent and on parity with other freshmen housing at WVU, at a rate of approximately \$4,100 per semester subject to annual WVU Board of Governors approval;

3. From January 1, 2017 to June 30, 2017, and for each fiscal year thereafter (July 1 to June 30) so long as the LLCs are not in default under any obligations to the Bank or in the UPlace Agreements, until June 30, 2025, "Rent" as defined in the WVCH Sublease to be paid by WVU under the WVCH Sublease will be no less than the amount required by WVCH to pay the principal and interest due by WVCH to the Bank for that fiscal year on no more than \$95,365,000 of principal owed by WVCH to Bank ("WVCH Loan"), in interest and principal payments as agreed to by WVU, the Bank, and the Developer, or any lesser amount due (any additional rent payments made in excess of actual amounts collected by WVU under the WVCH Sublease from residential subtenants to become a receivable to WVU under the Lease ("Additional Rent Receivable")); provided that WVU will not be required to pay as additional rent the amount needed to pay off the WVCH Loan at maturity but will only be responsible for principal and interest payments due prior to maturity if greater than the actual rents collected for University Place; provided, further, that for the period January 1, 2017 to June 30, 2017, "Rent", as defined in the WVCH Sublease, will be no less than the amount required by WVCH to pay the scheduled payments on the WVCH Loan for that period less the amount of the principal and interest payments made by WVCH pursuant to Section 4(2) hereof; and
4. The amount of financing subject to the Additional Rent calculation, as defined in the Parking Sublease shall be equal to \$24,000,000 ("DCPA Loan") and interest and principal shall be paid on such terms as agreed to by WVU, the Bank, and the Developer.
5. In accordance with Section 4.9 of the WVCH Sublease and Section 7.7 of the Lease, WVCH will pay all utility costs directly for University Place as a project expense, subject to reimbursement under Section 3, paragraph 3.b. hereunder.

## SECTION 2: LLCs FINANCING TERMS

The LLCs shall obtain the following changes from its Bank:

1. 1. The total, all-in interest rate (after taking into account loan credit pricing and interest rate protection agreements), for the period beginning January 1, 2017 and ending June 30, 2025 for both the WVCH Loan and DCPA Loan shall be set as agreed to by WVU, the Bank, and the Developer; The Debt Service Coverage covenant (tested annually based on June 30 year-end results) shall be reduced from 1.20x to 1.00x;
2. The maturity dates of the WVCH & DCPA loans shall be extended to June 30, 2025;
3. The Bank shall release the Debt Service Reserve Funds for both WVCH and DCPA, which will be used as follows:
  - a. An amount not to exceed \$500,000 to satisfy any new SWAP collateral obligations;
  - b. An amount not to exceed \$600,000 for investment in IT at University Place; and
  - c. The remainder to be applied to reduction of accounts receivable from WVCH to WVU.
4. Interest and principal shall be paid on the WVCH Loan as agreed to by WVU, the Bank, and the Developer;
5. On the Maturity Date of the WVCH Loan, all amounts held by Bank in the SWAP Collateral Account will be applied to reduce the principal amount of the WVCH Loan, unless otherwise mutually agreed upon by WVCH and WVU;
6. Other loan terms as customary and consistent with the existing financing structure and as necessary to facilitate the provisions of this Term Sheet.
7. If the Bank sells the promissory notes associated with either the WVCH Loan or the DCPA Loans (individually and collectively, hereinafter the



"Notes"), WVU will have the right to purchase the Notes at the price negotiated with the bona fide purchaser.

### SECTION 3: AMENDMENTS TO UPLACE AGREEMENTS

1. LLCs shall not incur or refinance any project-related debt without the prior written consent of WVU;
2. LLCs and WVU will pay all project related expenses as and when incurred pursuant to the UPlace Agreements and such payments made shall become that party's project expenses.
3. Beginning July 1, 2017, unless otherwise agreed to in writing by WVU, with respect to WVCH, annually the payment of expenses shall be in the following priority order, prior to any distribution of Net Revenues:
  - a. Payment of principal and interest to the Bank;
  - b. Reimbursement of current year project expenses to WVU;
  - c. Reimbursement of current year project expenses to WVCH;
  - d. Payment of \$5,900,000 for investment in Student Life activities, subject to an annual cap of \$737,500 in any given year;
  - e. Payment of Parking Facilities Preferential Rent due to WVU under the Lease;
  - f. Payment of accounts receivable owed to WVU, including without limitation, unpaid reimbursable expenses and Additional Rent Receivables for all periods (excepting any unpaid Management fees);
  - g. Funding of capital reserve fund in amounts as mutually agreed upon by WVCH and WVU, which fund shall be available, upon mutual agreement by WVCH and WVU, to pay costs associated with the build-out and improvements to the commercial/retail component of the Parking Facility;
  - h. Payment of WVU's CY management fee and any unpaid PY management fees;

- i. Payment to WVCH of accounts receivable for periods after FY 2017 and FY 2017 Developer Costs referenced in Section 4;
  - j. Payment of additional principal on the DCPA Loan up to a total amount of \$2,300,000.
4. Section 5.1.2 of the Lease shall be amended to restate in its entirety as follows:
  - 5.1.2. Lease Year Rent. Subject to the terms and provision hereof, commencing with the first day of the first Lease Year, Lessee agrees to pay to Lessor an amount equal to eighty-five percent (85%) of the Net Revenues of the Project per Lease Year of the Lease Term in which the University has an obligation under the University Sublease to make Additional Rent payments, whether or not the University actually makes any Additional Rent payments, and fifty-five (55%) of the Net Revenues of the Project per Lease Year for the remaining Lease Term (the "Lease Year Rent"). If, however, either the University Sublease or the University Parking Facilities Sublease is terminated without cause by the University or terminated for cause by Lessee, Lessee shall pay to Lessor an amount equal to thirty-eight percent (38%) of the Net Revenues of the Project per Lease Year beginning with the Lease Year in which said termination occurs and for the remaining Lease Term. Lease Year Rent will be paid yearly, within thirty (30) calendar days after the last day of each Lease Year during the Lease Term.
5. LLCs shall copy WVU on all documentation, including email, sent to the Bank or any of its agents or received by the LLCs from the Bank or any of its agents and Bank or its agents shall copy WVU on all notices or correspondence to the LLCs;
6. WVCH shall work with WVU on changes needed to UPlace to provide sufficient dining opportunities to freshman and changes needed to UPlace to comply with WVU requirements for freshman housing (any costs incurred to make such changes to be project expenses);

7. The Parking Sublease shall be amended to make it clear that WVU's obligation under the Parking Sublease for Additional Rent is limited to \$24,000,000 of principal of the DCPA Loan and that WVU's Additional Rent obligations under the Parking Sublease will not be construed to require WVU to pay off \$24,000,000 of principal of the DCPA Loan on maturity, but will only be responsible for principal and interest payments as agreed to by Bank, WVU, and the Developer, if such principal and interest payments are greater than the actual rents collected from the Parking Garage;
8. The UPlace Agreements shall be amended to clarify that so long as the University has an obligation under the University Sublease to make Additional Rent payments, whether or not the University actually makes any Additional Rent payments, any failure of WVCH to timely reimburse WVU for reimbursable expenses, if resulting solely from the lack of Project revenues available therefore, shall create an account receivable to WVU and will not be considered an event of default.
9. The UPlace Agreements shall be amended as necessary to conform with this Term Sheet, to add transparency and clarity to each Party's payment and information sharing obligations, and provide conformity of terms for freshman housing with like WVU student housing projects.

#### **SECTION 4: RESOLVING FISCAL YEAR 2017**

1. Except for \$900,000 of FY 2017 Developer costs described in Section 3, paragraph 3(i) hereof, WVCH shall forgo and waive any rights to reimbursement for all unreimbursed expenses for FY 2017 and any prior years. WVU shall retain all rights to reimbursement for all unreimbursed expenses as an account receivable for 2017 and all prior fiscal years; and
2. In addition to amounts previously paid, WVCH will cause cash to be contributed from one or more of its members or from an external source (without incurring any debt on WVCH, DCPA, or any of their respective assets) to pay principal and interest for FY 2017 for the period of January 1, 2017 to June 30, 2017 and any unpaid Utility or "other Developer Costs" for FY 2017.

#### **SECTION 5: RELEASES**

WVU, the LLCs and Bank will execute and deliver mutual comprehensive releases of liability relating to operation and management of University Place and the Parking Facility and the administration of the WVCH and DCPA Loans.

Acknowledged and agreed to on this 26th day of January, 2017, by:

West Virginia University

By: Narvel G. Weese Jr.

Name: NARVEL G WEESE JR.

Title: VICE PRESIDENT ADMINISTRATION AND FINANCE

WV Campus Housing, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Downtown Campus Parking Associates, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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Acknowledged and agreed to on this 26th day of January, 2017, by:

West Virginia University

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WV Campus Housing, LLC

By: Pagan \_\_\_\_\_  
Name: Pagan \_\_\_\_\_  
Title: Managing Member \_\_\_\_\_

Downtown Campus Parking Associates, LLC

By: Pagan \_\_\_\_\_  
Name: Pagan \_\_\_\_\_  
Title: Managing Member \_\_\_\_\_