

MINUTES OF THE SPECIAL MEETING OF THE UNIVERSITY OF LOUISVILLE
FOUNDATION, INC. AND THE ULH, INC. BOARDS OF DIRECTORS

In Open Session

Members of the University of Louisville Foundation, Inc. and ULH, Inc. Board of Directors met at 12:03 p.m. on December 20, 2017, in the ULF Boardroom at Cardinal Station, with members present and absent as follows:

Present: Dr. Mark Lynn, Vice Chair
Mr. Ronald Abrams
Mr. Mike Bowers
Mr. Paul Carrico
Ms. Laura Douglas
Mr. J. David Grissom
Ms. Donna Heitzman
Ms. Alice Houston
Ms. Diane B. Medley (via phone at 12:23)
Mr. Tom Meeker
Dr. Greg Postel
Mr. Earl Reed
Mr. John H. Schnatter (via videoconference)

Absent: Mr. Nitin Sahney

From the
Foundation: Mr. Keith Sherman, Interim Executive Director/COO
Mr. Jay Barbee, Administrative Systems Analyst
Ms. Julie Kroger, Executive Assistant
Mr. Mike Kramer, Director of Investment & Financial Management
Ms. Gina Lankswert, Project Manager
Ms. Susan Magness, Budget Director
Mr. Justin Ruhl, Director of Accounting Operations

From Legal
Counsel: Mr. Franklin Jelsma, Wyatt Tarrant & Combs

Guests: Ms. Susan Howarth, Interim University CFO
Mr. John Karman, UofL Director of Media Relations
Ms. Katherine North, RunSwitch

I. Call to Order

Having determined a quorum present, Dr. Mark Lynn called the meeting to order at 12:03 p.m. He reminded the Board members of their responsibility to avoid conflicts of interest and appearances of conflicts of interest. He stated each member had received the

agenda and related information prior to the meeting. He requested if any board member knows of any conflict of interest or appearance of conflict of interest with respect to any matter coming before the Board at this meeting, to please identify the conflict or appearance of conflict at this time. No conflicts were identified.

II. Consent Agenda

Next, Dr. Lynn read the consent agenda as follows:

Consent Agenda

- **Approval of Minutes, 11-21-2017**

Hearing no objection, Mr. Tom Meeker made a motion, which Mr. Mike Bowers seconded, to approve the Consent Agenda. The motion passed.

III. Report of Governance and Organizational Structure Committee Chair

Committee Chair Alice Houston reported the process of reviewing and revising the current Articles of Incorporation and existing bylaws to incorporate changes based on the MOU, special committee recommendations, the Agreement with the UofL Board of Trustees and industry best practices was almost complete.

The Governance Committee will be proposing new standing committees for the Board to consider. Committee charters have been drafted to ensure all committees have clearly defined areas of responsibility in their charters so that everything – from new Board member recruitment to the spending policy – resides in a specific committee.

The Committee will meet on January 10 to finalize the documents before bringing them to the Board at the January meeting.

IV. Report of the Audit Committee Chair

Committee Chair Donna Heitzman reported that, since the Board approved the engagement of Deming Malone Livesay & Ostroff (DMLLO) as the 990 tax preparation service provider at its November Board meeting, an initial planning session took place in December. The 990 work will be finished earlier than in prior years so the Board will have plenty of time to review the returns prior to their filing. Ms. Heitzman stated while the filing of the 6 returns have been extended to May 15, the plan is to file them in April.

V. Report of Finance Committee Chair

Committee Chair Mike Bowers reported the Finance Committee met this morning, they received an endowment update from Cambridge Associates and reviewed preliminary November financials. He stated the market returns have been strong and the Foundation's spending has been disciplined.

VI. Overview of Preliminary November Financials

Mr. Bowers stated the new format for presentation of the financials is the result of much discussion at recent Board meetings. The goal was to make the financial information easier to read and understand. He asked Board members to provide feedback on the new format and any potential changes they would like to see in the future.

Mr. Keith Sherman reviewed the **attached** presentation highlighting the endowment progression, donor pledges, and cash received. Dr. Greg Postel added there has been a surge in donations during December that will be seen in future financial reporting.

VII. Report of ULREF Board Chair

Mr. Earl Reed, Chair of the UofL Real Estate Foundation (ULREF) Board, reported that the ULREF Board reviewed their current financials at their December 20 meeting. He stated ULREF is tracking within its budget.

Mr. Reed said the ULREF Board authorized Mr. Keith Sherman to work with legal counsel to enter into a one-year loan extension with PNC Bank under the exact same terms as the current loan for the parking garage at 220 South Preston Street.

The ULREF Board also discussed the future acquisition or sale of real property and potential litigation in an executive session. Mr. Reed noted they have authorized Mr. Keith Sherman and Foundation staff to continue to analyze and pursue the potential disposition of certain properties. He stated they are close to reaching agreements on at least two properties. They also continue to appraise other buildings and work with the University on how some properties may be used to support the University's strategic needs.

Mr. David Grissom inquired about the expected cash from the real property sales to which Mr. Keith Sherman replied the proceeds would go towards debt owed to the UofL Foundation and the University. Mr. Ron Abrams inquired about the properties not sold, Mr. Keith Sherman indicated the plan is to keep them in ULREF, except the residence halls that will be transferred to the University after their debt is paid off. Mr. David Grissom asked if the plan was to eliminate the ULREF; Mr. Earl Reed indicated that will be addressed after properties are sold.

VIII. Report of Special Committee to Address the A&M Report Chair

Committee Chair Earl Reed reported that the Board of Trustees authorized the Management Representation and Indemnity Agreement between the University and Foundation on December 14. He stated the Agreement is a validation of the work the Foundation has done to address the State Audit and forensic investigation reports. Mr. Reed added the work was done by the Foundation because it was the right thing to do, not because someone needed to rein in the Board or force them into an Agreement. He noted there has never been a better time to invest in the University of Louisville.

Mr. Reed reported the committee continues exploring the possibility of the Foundation initiating litigation. He noted there are many factors to consider including the cost, the likelihood of prevailing, and the overall impact this could have on the entire campus community. It is a deliberative process and one the Committee is taking very seriously working closely with Mr. Keith Sherman, Mr. Franklin Jelsma and now the Board of Trustees.

Dr. Mark Lynn thanked Mr. Earl Reed for his work. Mr. Reed thanked Mr. Tom Meeker for his role in finalizing the Agreement.

IX. Action Item: Resolution Regarding FSA Plan

Mr. Keith Sherman reported the health insurance provided to Foundation employees includes a Flexible Spending Account and a Health Savings Account. Benefit Marketing Solutions, LLC (BMS) has been the Plan Administrator for these plans since inception. They have annually required a resolution that authorizes BMS to administer these plans on our behalf. Mr. Sherman stated counsel has reviewed the plan documents, provided comments and he was working with BMS to address the recommended changes.

Mr. Tom Meeker made a motion, which Mr. Ron Abrams seconded, to authorize Mr. Keith Sherman to execute the **attached** resolution authorizing BMS to administer the Flex Benefits Plan for this plan year (December 1, 2017 to November 30, 2018). The motion passed.

X. Executive Session to Discuss Potential Litigation and Business Proposal Pursuant to KRS 61.810(1)(c) and (g)

Dr. Mark Lynn asked for a motion to go into executive session to discuss potential litigation and a business proposal pursuant to KRS 61.810(1)(c) and (g).

Ms. Alice Houston made the motion, which Ms. Laura Douglas seconded, to go into executive session at 12:24 p.m. The motion passed.

XI. Reconvene Open Session

After open session was reconvened at 1:04 p.m., Dr. Mark Lynn reported that potential litigation and a business proposal were discussed during the executive session. At this point, the Board was ready to take action on three items.

The first action was approving the **attached** resolution authorizing Mr. Keith Sherman to work with the Chair of the Finance Committee and legal counsel, to obtain a loan, not to exceed \$2 million in principal, payable over 5 years with 3.15% fixed interest and use the proceeds to pay Stockyards Bank & Trust the unpaid balance of the PGxL loan. Mr. Earl Reed made a motion to approve the resolution, Mr. Ron Abrams seconded it, and the motion passed. Ms. Donna Heitzman abstained from voting noting a conflict of interest previously reported.

The second action was approving the **attached** corporate signature authority resolution. Mr. Earl Reed made a motion, which Ms. Laura Douglas seconded, to approve the resolution. The motion passed.

Mr. Franklin Jelsma reviewed the recommendation to approve an amendment to the December 14, 2017 Management Representation and Indemnity Agreement (Agreement) between the Foundation and the University changing the elimination of the President's Initiative Spending Allocation and the Advancement Spending Allocation from being effective immediately to being effective on June 30, 2018. Dr. Mark Lynn called a vote on the resolution that passed unanimously.

XII. Other Business

Mr. Keith Sherman expressed his appreciation for the work of the Board during a difficult year.

XIII. Adjournment

Having no other business before the Board, Dr. Mark Lynn asked for a motion to adjourn. Ms. Alice Houston made a motion to adjourn, which Mr. Ron Abrams seconded. The motion passed. Meeting adjourned at 1:07 p.m.

Approved by:

Signature on File

Laura Douglas
Secretary