

AGENDA-P3 Housing

June 10, 2020

3:30-4:30pm – TEAMS Call

I. P3/Corvias Update

- A. Corvias May 29, 2020 letter to BOR
- B. USO Review of P3 Institution Fall Return to Campus Plans
- C. Corvias' Requests to Review and Provide Guidance on Return to Campus Plans

II. P3 Housing Concerns and Risks

USO Options for Consideration:

A. Room Capacity or Rate Reduction

- 1. USO directs P3 institutions to lease all P3 beds.
- 2. USO permits P3 institutions to reduce number of beds if institution agrees to make Corvias financially whole for any shortfalls.
- 3. USO negotiates with Corvias to allow BOR to reduce room capacity or rates.

B. Housing Refunds

- 1. USO does not provide P3 housing refunds for FY 2021.
- 2. USO provides P3 housing refunds and identifies alternative source of funds.
- 3. USO negotiates with Corvias to cover or share responsibility of P3 housing refunds.

C. Provide Window of Opportunity to Cancel P3 Housing Agreement

- 1. USO directs P3 institutions not to provide P3 housing cancellation window for FY 2021.
- 2. USO permits P3 institutions to provide cancellation window if institution agrees to make Corvias financially whole for any shortfalls.
- 3. USO negotiates with Corvias to allow cancellation window.

D. Amendments to P3 Housing Agreement

- 1. USO does not permit P3 institutions to amend P3 housing agreement.
- 2. USO permits standardized amendments to P3 housing agreement if institution agrees to make Corvias financially whole for any shortfalls.
- 3. USO negotiates with Corvias prior to implementing any amendments to P3 housing agreement.

III. Next Steps

- A. Response to P3 Institutions/Georgia State University
- B. Response to Corvias
- C. Timeline

DISCUSSION POINTS:

P3/Corvias Update - BOR received a letter from Corvias dated May 29, 2020, asserting that BOR does not have the unilateral right to: i) take actions that prevent students or have the effect of discouraging students from living on campus; or ii) exercise any BOR reserved rights that materially interferes or negatively impacts Corvias' operation and management of P3 housing. Further, Corvias' reading of CDC guidance does not require social distancing among roommates and therefore, a reduction in number of students per room would be unnecessary.

Since this letter, Corvias has requested a meeting to discuss return to campus P3 housing plans.

This Corvias letter coupled with USO's recent review of institutions' return to campus plans highlight four areas of concern with campus housing that need USO direction. As to P3 housing, USO's direction may have different legal, financial, and operational implications from retained housing as follows:

- I. **Room Capacity or Rate Reduction**: Georgia State University plans to reopen fall 2020 with 75% occupancy in retained and P3 housing. Georgia State plans to convert double rooms to single rooms and charge a higher single occupancy rate.
 - A. **Legal Discussion**: The P3 Operative Agreements do not provide BOR with unilateral right to reduce the regular capacity of room occupancy or rate. The P3 Operative Agreements lease P3 housing facilities to Corvias and provide that student demand shall dictate occupancy (Section 5.6 of MCA). Further, the P3 Operative Agreements provide for annually setting the housing rates and capping increases, but does not speak to decreases.

BOR may assert the following tenuous arguments to allow BOR's unilateral reduction:

- BOR does have right to make all room assignments (POA-6.4.1).
- BOR shall assign residents to the Project in same manner as Retained Housing (POA-6.4.2).
- Concessionaire shall adhere to BOR's Ethics policy, which requires putting students' health and safety first (POA-15.22).

Given the contractual language and Corvias' position letter against BOR taking any actions that may negatively impact Corvias' operation, any BOR unilateral decision to reduce room capacity or rate will be at BOR's legal and financial risk, and likely invite a Corvias dispute and legal challenge.

- B. **Financial Impact**: Financial projections indicate that GSU's decision to occupy 75% of P3 housing result in an overall P3 portfolio occupancy of 83.5%. This occupancy equates to a \$3.1 million decline in gross revenues for FY 2021. Both the Lender DCR (0.94) and S&P DCR (1.17) are below the minimum 1.0 DCR and 1.20 S&P DCR respectively. The project does not have enough cash flow to fund all project expenses and without revenue adjustments from Corvias or BOR, it will be in default. In addition, Corvias will need to increase the Letter of Credit from \$6,500,000 to \$9,274,193.

FY 2021 P3 Operating Projections	Corvias Plan Based on 90% Occupancy	GSU Elimination of Shared Rooms Plan	Difference
P3 Occupancy	90.0%	83.5%	6.5%
Total Revenue:	70,660,069	67,522,996	3,137,073
Total Expenses	29,874,420	27,886,289	1,988,131
Cash Flow Available for Debt Service	40,785,649	39,636,707	1,148,942
Debt Service	31,399,822	31,399,822	0
Residual Cash Flow	9,385,827	8,236,885	1,148,942
Secondary Ground Payment	7,769,001	9,274,193	(1,505,192)
Property Management Base Fee	1,398,620	1,335,879	62,741
Surplus/Shortfall	218,206	-2,373,187	2,591,393
Total Ground Rent Payment	9,274,193	9,274,193	0
Letter of Credit	7,769,001	9,274,193	0
Primary Ground Rent:	1,505,191	0	1,505,191
Secondary Ground Rent	7,769,001	9,274,193	(1,505,191)
Lender DCR	1.03	0.91	.12
S&P DCR	1.20	1.17	.03
Additional Revenue Needed for S&P	0	1,061,777	1,061,777

C. USO Options for Consideration:

1. USO directs P3 institutions to lease all P3 beds.
2. USO permits P3 institutions to reduce number of beds if institution agrees to make Corvias financially whole for any shortfalls.
3. USO negotiates with Corvias to allow BOR to reduce room capacity or rates.

II. Housing Refunds: BOR unilaterally closed all campus housing and provided housing refunds in Spring 2020. The total amount of P3 housing refund was \$13.4 million (77% or \$10.3 million funded by USO). Corvias did not cover or share in responsibility for this refund nor indicated a willingness to do so for Fall 2020 if housing is similarly closed for public health measures.

- A. Legal Discussion:** P3 Operative Agreements do not require Corvias to provide a refund to a student for the termination of housing agreement or temporary suspension of housing due to closure for public health measures.

BOR may assert the following fair arguments to require Corvias' responsibility of refunds: Project Operating Agreement (Section 4.2.2) allows BOR to adjust amount (e.g. pro rata reimbursement of housing fee) of Gross Fees remitted if resident terminates housing agreement because of Institution-initiated withdrawal due to health and/or safety reasons. [Note-Section contains ambiguous language as to whether this termination is allowed if not permitted in the housing agreement. Also, it is unclear if "withdrawal" is from academic program or housing or both].

Some P3 housing agreement allows a student to terminate agreement without cancellation fee and receive a prorated refund for institution approved emergency or medical withdrawal. BOR may assert public health emergency falls under this provision. However, note even if argument is successful BOR may never be reimbursed for refunds provided if after remittance of Gross Fees to Corvias. Accordingly, BOR will likely have to seek reimbursement through legal proceedings.

Any BOR unilateral closure of P3 housing and refund will be at BOR's legal and financial risk. BOR can reasonably anticipate Corvias initiating dispute resolution and legal proceedings if BOR provides refunds from collected Gross Fees without covering refunded amount.

B. Financial Impact: All of the USO P3 reserve was used to provide housing refund for spring semester. P3 institutions were given the options to refund USO for the \$10.3 million in refunds provided. Thus far, only one institution, UNG have refunded \$886,401 to the USO.

C. BOR Options:

1. USO does not provide P3 housing refunds for FY 2021.
2. USO provides P3 housing refunds and identifies source of funds.
3. USO negotiates with Corvias to cover or share responsibility of P3 housing refunds.

III. Provide Window of Opportunity to Cancel P3 Housing Agreement: Some institutions' return to campus plans contemplate providing students an undefined window to cancel the housing agreement without any cancellation fee.

A. Legal Discussion: P3 Operative Agreements do not allow BOR to provide a window of time for a student to cancel the housing agreement without a cancellation fee. The P3 housing agreement only provides a limited number of event that a student can terminate the housing agreement without incurring cancellation fee.

Any BOR unilateral decision to allow window of "just cause" opportunity to cancel housing agreement outside of permitted events will be at BOR's legal and financial risk, and likely invite a Corvias dispute and legal challenge.

B. Financial Impact: We are unable to estimate the number of students that may decide to terminate their P3 housing contract. What is certain is that BOR would most likely have to make Corvias financially whole.

C. BOR Options:

1. USO directs P3 institutions not to provide P3 housing cancellation window for FY 2021.
2. USO permits P3 institutions to provide cancellation window if institution agrees to make Corvias financially whole for any shortfalls.
3. USO negotiates with Corvias to allow cancellation window.

IV. Amendments to P3 Housing Agreement: Institutions plan to revise housing agreements to address public health measures related to cancellation, assumption of risk, and other items as previously discussed.

A. Legal Discussion: P3 Operative Agreements allow BOR to amend the P3 form housing agreement with reasonable notice to Corvias but the P3 housing form agreement must be the same as the retained housing form agreement (POA-6.3.1).

Notwithstanding the above, any BOR unilateral revisions to housing agreement that shift risk to or disadvantage Corvias will likely be met with Corvias dispute. For example:

- From academic to semester term; and
- Cancellation and refund provisions;

In contrast, any BOR unilateral revisions that provide Corvias with more protection or less risk will likely be acceptable to Corvias without dispute. For example:

- Public health assumption of risk acknowledgement;
- No refund provision.

Any BOR unilateral decision to amend the housing agreement may invite Corvias dispute and legal challenge depending of the impact to Corvias operation and P3 financials.

B. Financial Impact: The exact financial impact is not known at this time however, BOR would most likely have to assume any financial shortfall.

C. BOR Options

1. USO does not permit P3 institutions to amend P3 housing agreement.
2. USO permits standardized amendments to P3 housing agreement if institution agrees to make Corvias financially whole for any shortfalls.
3. USO negotiates with Corvias prior to implementing any amendments to P3 housing agreement, and thereafter provide notice to Corvias regarding any revisions.



May 29, 2020

Vice Chancellor for Fiscal Affairs and Treasurer Office of Fiscal Affairs
Board of Regents of the University System of Georgia
270 Washington Street, SW
Atlanta, GA 30334

With copy to:

Vice Chancellor for Legal Affairs
Office of Legal Affairs
Board of Regents of the University System of Georgia
270 Washington Street, SW
Atlanta, GA 30334

RE: Amended and Restated Master Concession Agreement for the Leasing and Development of Student Housing (Phase 1) between the Board of Regents of the University of System of Georgia (the "BOR") and Corvias Campus Living – USG, LLC ("Concessionaire") dated May 13, 2015, as further amended (the "Phase 1 Student Housing MCA")

Dear Vice Chancellor,

We have been closely following media reports regarding the variety of possible scenarios colleges and universities are considering for conducting on-campus classes for the Fall 2020 semester. We are also aware of the latest guidance issued by the Center for Disease Control (on (i) Colleges and Universities, and (ii) Shared or Congregate Housing ("CDC Guidance").

We understand the BOR and the nine institutions involved in the Phase 1 Student Housing MCA may currently be deliberating alternative plans for the Fall 2020 semester, and we therefore felt it important to communicate directly with you regarding our concerns, as the Concessionaire, regarding certain actions the BOR may be considering at this time.

First, the Phase 1 Student Housing MCA does not give the BOR the unilateral right to (i) take actions that would either (a) prevent students at the Institutions from living on Campus, or (b) have the intent and effect of discouraging students at the Institutions from living on campus, or (ii) exercise any of its reserved rights in a manner that materially interferes with or has a materially negative impact on the Concessionaire's operation and management of the Project.

Accordingly, while the BOR can certainly do what it wishes with respect to its Retained Housing, the BOR does not have the unilateral right under the Phase 1 Student Housing MCA to institute a policy that would for example, either (i) limit the number of students who can occupy the Phase 1 Student Housing, or (ii) reduce the semester housing fees (due to a shortened semester or otherwise) for which the Concessionaire has a contractual right to receive per the Phase 1 Student Housing MCA.

As partners in a 40-year arrangement, we believe the Concessionaire and BOR's interests should be aligned, and that critical decisions that could impact housing fee revenue should be made with consideration of the long-term financial viability of the on-campus student housing project. It is important to note that the Concessionaire took on \$548 million in debt in order to defease over \$311 million of BOR debt and facilitate the construction of approximately 6,500 new beds and significant renovations of approximately 3,500 beds across the nine involved USG Institution campuses. That debt is secured by the Concessionaire's rights to receive the Phase 1 Student Housing fee revenue. And while the Concessionaire and lender have accepted the risk of fluctuating student housing demand, they have not accepted the risk of unilateral actions by BOR that would negatively impact Phase 1 Student Housing fee revenues.

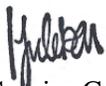
Second, please note that we intend to follow, as closely as reasonably possible, applicable CDC Guidance relating to social distancing and cleanliness/disinfecting, as well as APPA standards relating to cleanliness. However, it should be specifically noted that pursuant to applicable CDC Guidance, social distancing is not required amongst housemates - and roommates are considered housemates. Accordingly, while the CDC may be of the belief that reducing density in student housing may lower the possibility of infection, we do not believe that requires a reduction in the number of roommates that would typically be permitted in the Phase 1 Student Housing or the number of students that can be housed in a given building. Rather, we believe a more appropriate course of action would be to do things like limit the occupancy and use of common areas, shared bathrooms, and elevators – all things we are already preparing to address, if and as necessary this Fall.

Moreover, limiting the occupancy of on-campus student housing will not ultimately benefit students or the University community, since displaced students will be forced to occupy off campus housing that is likely more expensive and will not have the benefit of the same level of health-conscious operations the Concessionaire and the University can maintain in the on-campus housing.

We trust you will understand why we felt it important to make our position clear on these critical issues at this time. As always, we welcome the opportunity to discuss ways in which we may be able to collaboratively work together as partners to develop solutions to address challenges such as those the BOR and Institutions are confronting as a result of the COVID-19 pandemic.

Please let us know if you have any questions.

Sincerely,



Corvias Campus Living – USG, LLC

Chris Wilson

Vice President and Authorized Representative