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November 1, 2024

Commissioner Geoffrey Landward
Via email

Re: Weber State University Student Housing Project

Dear Commissioner Landward,

Weber State University is requesting the Board of Higher Education ("Board") to authorize a public private partnership between Weber State University ("University") and Keller Development Group, LLC ("KDG") under Board Policy R712, Nontraditional Arrangement for Development of Facilities on Campuses. The decision to proceed with KDG as a partner came after a standard and thorough RFP process.

Under Board Policy R712-5, the Board can authorize a public private partnership subject to "advice from the Attorney General's Office that the specific proposal is within the Board's authority to approve under the statute." Additionally, before the project can be finalized, other conditions listed in the policy must be met, including contractual provisions and construction requirements.

The Board has authority to approve the proposed project under the following statutes: Utah Code §53B-2-101 et seq., §53B-20-103(2), and §53B-20-104(1).

Under Utah Code §53B-2-101(2)(a), institutions of higher education, including the University, "may, subject to [Title 53B], take, hold, lease, sell, and convey real and personal property as the interest of the institution requires."

Under Utah Code §53B-20-103(2), the Board, on behalf of institutions of higher education, may:

- (a) acquire, purchase, contract, improve, remodel, add to, and extend capital facilities projects and buildings including necessary and related utilities;
- (b) accept buildings, land, or a combination of buildings and land, donated to an eligible higher education institution without obtaining approval of the

donation from the director of the Division of Facilities Construction and Management;

- (c) acquire necessary and suitable equipment, furnishings, and land for institutional projects and buildings;
- (d) set aside portions of campuses for institutional projects and buildings;
- (e) maintain and operate institutional projects and buildings; and
- (f) impose and collect rents, fees, and charges for the use of institutional projects and buildings.

Utah Code §53B-20-104(1) requires the Board to "approve all new construction, repair, or purchase of educational and general buildings and facilities financed from any source at all institutions subject to the jurisdiction of the [B]oard."

In this arrangement, there will be a 99-year lease for the land under the building. KDG will construct and own the building; maintain, operate and keep insurance for the facility; and assume the primary risks of the facility through the term of the lease. These obligations will be subject to the oversight and approval of the University. At the end of the lease, the University will have the discretion to require the lessee to demolish the facilities or take ownership of the facility. At any time during the lease, the University will have the right of first refusal to purchase the building if KDG seeks to sell to another investor, and all potential future owners are required to be experienced in managing residential housing.

KDG's costs are expected to be near \$47 million, while the University has no direct expenses for the project itself; though the University will support the project by creating additional parking on University property, utilizing funding from a gift in the amount of \$1.7 million dedicated for this purpose. Any University costs related to this project will be covered by internal University funds.

Based on my review of the proposal as it has been presented and the statutes referenced above, the Board has the legal authority to provide final approval of the project, subject to Attorney General review and approval of all contract documents as to form and legal authority as provided by R712-5.6.

Please let me know if you have any questions.

Thank you,



Natalie Nelson
Education Division Director
Utah Attorney General's Office

cc: Alison Adams, USHE General Counsel, via email