

HUMBOLDT STATE UNIVERSITY

Vice President of Administrative Affairs

July 3, 2018

To: Arcata City Council Members

From: Douglas Dawes, Vice President for Administration & Finance

CC: Lisa Rossbacher, President

Re: HSU and AMCAL Major Agreement Terms

As you are aware HSU's goal has been and is to increase the availability of quality, safe, affordable housing for our students, who have repeatedly stressed the importance of this.

The City of Arcata requested that Humboldt State provide the contract that it has been negotiating with AMCAL/Coleraine (AMCAL) that would allow the university to manage the Village, a proposed new student housing community.

While the contract has yet to be finalized and cannot yet be released publicly, the University is sharing with the city a "term sheet", which is a summary of the tentative contract's main points upon the project approval by the City of Arcata. The contract will be publicly released when it's finalized.

Attached below is the term sheet that AMCAL and HSU have agreed to.

SUMMARY OF MAJOR AGREEMENT TERMS ASSOCIATED WITH THE VILLAGE UPON PROJECT APPROVAL BY THE CITY

AMCAL/Coleraine ('AMCAL') will be responsible for developing, constructing and financing the 602-bed student housing community. HSU will operate The Village as its own student housing stock subject to a Property Management Agreement. HSU will have a ten-year right under an Option to Purchase Agreement to acquire the property. AMCAL and HSU will enter into a 35-year master lease for the purpose of establishing exclusive use and setting below market room rates.

1) Property Management Agreement

- 1) Term: 35-years
- 2) HSU's Responsibilities
 - i) Operations, including staffing, leasing, resident relations and student-focused programming
 - ii) Maintenance
 - iii) Maintain Records and Bank Accounts
 - iv) Generate and Distribute Reports and Statements
 - v) Compliance with legal requirements
 - vi) Procurement
- 3) HSU's Authority
 - i) Enter into Contracts for Utilities and Other Services
 - ii) Purchase of Supplies and Materials
 - iii) Promote a Quality Living and Learning Environment
 - iv) Ensure Safety and Security
 - v) Enforce Housing Guidelines, including imposing a range of sanctions aimed at deterring poor conduct
- 4) Restriction on Occupancy
 - i) Occupancy shall be perpetually restricted to 602 residents unless otherwise approved by Arcata City Council
- 5) Residual Receipts Sharing – To Be Discussed
- 6) Insurance
 - i) AMCAL and HSU each shall procure their respective insurance
- 7) Mutual Indemnification
- 8) Default by HSU or Sale by AMCAL
 - i) HSU fails to operate the project in accordance with the annual operating budget
 - (1) HSU has up to 3 years to achieve 95% occupancy and 1 additional year to cure if not achieved
 - ii) HSU fails to remit payment of surplus cash flow before debt service to AMCAL.
 - iii) An AMCAL loan default is a default under any circumstances.
 - iv) In the Event of an HSU default, AMCAL may make such payment for services per the approved budget or perform such act for HSU, directly or indirectly.
 - v) Event of Default or Sale may lead to termination.

2) Option Agreement and Right of First Offer (together the "Option Agreement")

- 1) Grants HSU an option to acquire the property.
- 2) Grants HSU a right of first refusal (ROFR) and right of first offer (ROFO).
- 3) Option Period is 10 years, including a one-year lockout after the project receives a Certificate of Occupancy, after which the Option Agreement automatically terminates.
- 4) Purchase will be subject to the continuation of both the Payment in Lieu of Taxes and Restriction on Occupancy.
- 5) Option Price will be a pre-determined strike price and annual escalator.
- 6) HSU must provide a 6 month notice of their intent to exercise the Option.
- 7) If Option is exercised, closing shall occur in 120 days with 2 30-day extensions due to unforeseen circumstances.
- 8) Right of First Refusal ("ROFR")

- i) If prior to expiration of the Option period, AMCAL decides to sell to a third party, HSU shall have 30 business days from delivery of AMCAL's notice to sell to elect to purchase and 120 days thereafter to close with two 30 day extensions due to unforeseen circumstances.
 - ii) If HSU does not elect to purchase, AMCAL has up to 18 month to sell for a price at least 90% of ROFR price.
 - iii) ROFR terminates concurrently with the Option Agreement.
- 9) Right of First Offer ("ROFO")
- i) Commences on the expiration of the Option Agreement.
 - ii) If AMCAL decides to sell to a third party, AMCAL shall deliver notice of intent, price and terms. HSU shall have 20 business days from delivery of notice to elect to purchase and 120 days thereafter to close with two 30 day extensions due to unforeseen circumstances.
 - iii) If HSU does not elect to purchase, AMCAL has up to 30 months to sell for a price at least 90% of the Offer.
- 10) The Property shall be accepted "as is", "where is" and "with all faults". All sub contracts and consulting agreements shall be assigned at HSU's request to HSU with the exception of agreements with AMCAL.
- 11) Memorandum of Option may be recorded.

3) Master Lease

- 1) Term: 35 years
- 2) HSU as Lessee rents from AMCAL as Lessor the property.
- 3) Rent: 100% of surplus cash flow before debt service. HSU is not responsible for any shortfalls AMCAL may have related to its debt service or internal return requirements.
- 4) Net Lease
 - i) Lessee pays all costs, expenses and obligations from revenue per the Property Management Agreement.
 - ii) Lessee assumes the sole responsibility for the condition, entitlement, improvement, use, operation, maintenance, underletting and management.
 - iii) Lessor has no responsibility and no liability for damage.
- 5) Exclusivity
 - i) HSU shall have exclusive right to possession and use of the property.
 - ii) HSU Housing shall not market, offer or otherwise place students in any off-campus housing, other than at the project, provided there is available occupancy at the project (freshmen, special needs and emergency circumstances, excluded).
- 6) Room Rates: Initial rates shall be set by the bed for the academic year and summer at 5% below the greater of HSU's College Creek Apartments or the most recently developed on-campus student housing (the "Index"). Rates shall escalate at the greater of 3% per year or the annual increase of the Index. Notwithstanding the foregoing, the Lessor and Lessee shall have the authority to establish rates by unanimous decision and the goal is for rates to be less than College Creek Apartments for the term of the agreement.
- 7) Lease not terminable: Lease shall not terminate, nor shall AMCAL or HSU have any right to terminate, rescind or void the Lease or to be released or discharged from any of their respective obligations or liabilities for any reason. Notwithstanding the foregoing, in the event of a sale to a third-party, both HSU and subsequent owner(s) will continue the master lease under these provisions, financial and otherwise.
- 8) Plans and Specs: Subject to HSU's review and AMCAL's obligation to incorporate HSU feedback to the extent costs are not unreasonably increased.
- 9) Warranty Period: one year period after turning over the completed development to HSU.
- 10) Mutual Indemnification
- 11) Financing Provision: AMCAL shall have the right to pledge, hypothecate and mortgage the property in connection with any financing and HSU shall cooperate.