WRIGHT STATE UNIVERSITY BOARD OF TRUSTEES

Wright State University Foundation Report
September 2020

1. President & CEO Report

2. Wright State Foundation Financial Report

Wright State University Foundation
President & CEO Report

Updates from last report:
Immediate objectives being pursued by the Foundation include but are not limited to:

- New Board Members
  - The following trustees began their first terms on July 1, 2020:
    - Gary McCullough – Resides in Chicago and Los Angeles; Alum (B.S. Business ’81); MBA from Northwestern; career has included roles as a Corporate Board Member, Chief Executive Officer, President, and Senior Executive in market-leading consumer and commercial companies; currently, an investor in and advisor to several private entities; on Board of Trustees of Chicago’s Rush University Medical Center; in 2005 and 2009, named by *Black Enterprise* magazine as one of the “100 Most Powerful Executives in Corporate America.”
    - Samia Borchers, M.D. – Resides in Dayton region; Alum (M.D. ’80); private dermatology practice; serves on Wright State University Academy of Medicine Board of Trustees; speaks multiple languages, including Arabic.
    - Randy Phillips – Resides in northern Virginia; Alum (B.S. Computer Science ’82); SVP for Corporate Development, Leidos, Inc.; was on *Rise.Shine* Campaign Cabinet; former 9-year Foundation Board Trustee; received Outstanding Alumni Award in 2005.
    - Sharon Rab – Resides in Dayton region; Alum (MEd in Curriculum and Supervision ’75); received an Honorary Degree (Doctor of Humane Letters) 2015; retired educator (Miami University and Kettering Fairmont High School); 2018 YWCA Dayton Women of Influence Honoree; past *Dayton Daily News* Top Ten Women awardee and twice a finalist for Ohio Teacher of the Year.
    - Hernan Olivas – Resides in Dayton region; CEO/President of O’Neil & Associates; on Board of Trustees of Dayton Area Chamber of Commerce.
    - Student Representative – Lauren MacGregor, Graduate Assistant.
  - Nitin Kumbhani has agreed to serve as an ex-officio member of the investment committee.

- The Foundation board continues to pursue the Venture/Private Equity Fund purchase from the University

  - SEI will be providing an assessment of the PE funds for consideration by the Investment Committee and ultimate decision at our October meeting.
  - Terms of the purchase will likely include a modest discount.

- Emergence Center – the idea around the center continues to evolve, with the following to be noted:
    - A white paper on the Emergence Center as well as an opinion letter from Foundation counsel is attached.
    - The Emergence Center took on its first tenant at the beginning of August with potential new clients being shown the space almost weekly.

- Food Pantry
    - The process of the Foundation leading the Raider Food Pantry, Inc. (RFPI) is nearing completion.
    - An opinion letter from Foundation counsel is attached.
    - A three-person Board of Directors will be named and include Scott Rash, a WSUF Board Member, and TBD from WSU.
    - The slate of President, Treasurer, and Secretary will be appointed by the RFPI with this recommended slate to include Destinee Biesemeyer (President), Bob Batson (Treasurer), and Andrea Wall (Secretary).
    - CT Corporation System will serve as statutory agent, as it does for WSUF.

- Transition plan for University Advancement staff to Foundation
    - The Foundation instituted a 5% gift fee effective July 1, 2020 that would cover the transition of certain University Advancement functions to the Foundation.
    - The release regarding this fee as well as an FAQ regarding the fee is attached.
    - A key piece of financing these moves is releasing funds the Foundation approved for an Executive Director of Planned Giving that are being used to fund the Interim Vice President position.

- Affiliation Agreement and Shared Services Agreement with the University
    - Approved versions have been provided to the university.

- Student First Fund Awards
    - 12 projects were approved for Students First Fund grants, with awards ranging from $2,000 to $8,000.
    - The pandemic has affected the start and/or completion of projects. Grants Committee will decide in October how to respond to requests to delay funding until 2021.

- Board met virtually on July 31, 2020. Next meeting will be held virtually in October.

Wright State University Foundation Financial Report

September 2020

Financial markets, which experienced their greatest losses since the Great Recession of 2008-2009 in the first quarter of 2020, inexplicably roared back during the second quarter of the year. By the end of June, first quarter losses were almost completely erased, a feat subsequently achieved in July and August. Despite this extraordinarily positive performance, market watchers continue to be skeptical that such results are sustainable given the negative impacts suffered by many sectors of the economy. While temporary stimulus programs provided the intended boost in economic activity, it is less clear how long such efforts will be able to continue with the same effect.

The Foundation's endowment portfolio ended the fiscal year with a market value of $87.7 million, a loss of $1.4 million over the previous year-end value including net capital withdrawals of $1.0 million. That translates into an earnings rate of minus 0.58%. Although a negative return on investments is never desirable, this result seems almost positive given the drastic losses experienced earlier in the year. As mentioned above, positive market performance has continued throughout the summer.

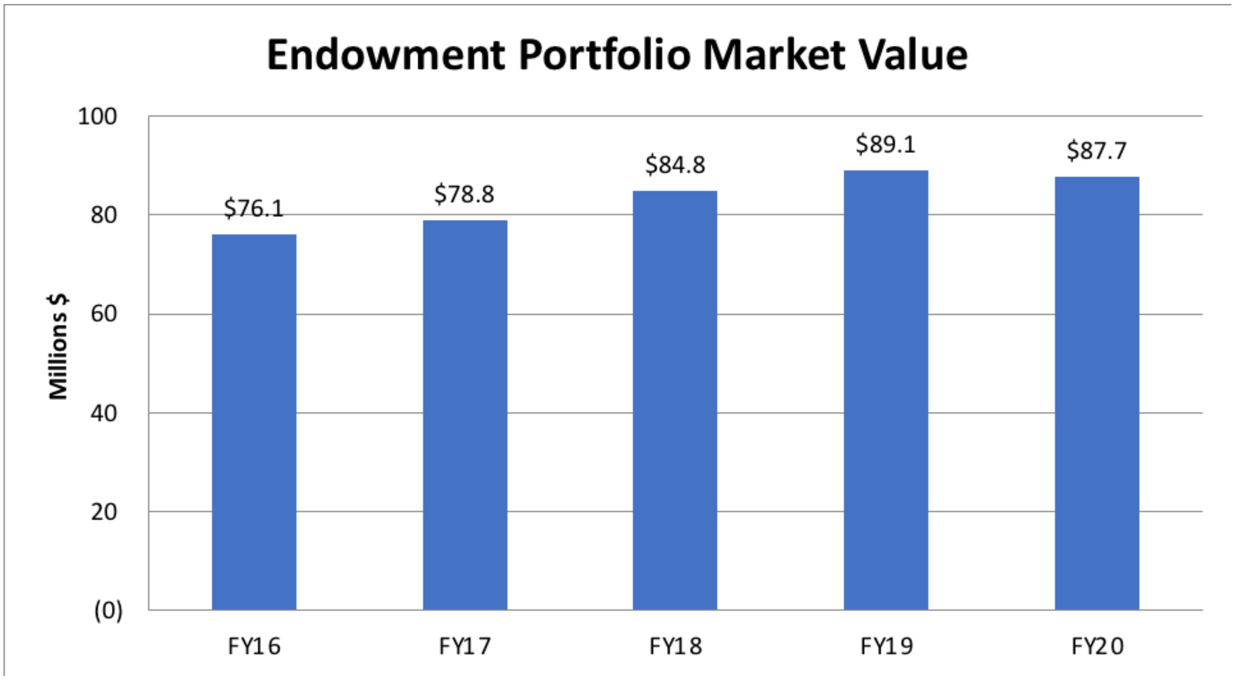
For the fiscal year, equity investments were mostly responsible for the slight loss our endowment portfolio experienced. They lost 0.8% for the year, with domestic securities outperforming international issues. Our global investments lost 12.1%, while international (excluding U.S.), lost 8.5%. Domestic issues did only slightly better losing 6.6% as a class. Domestic small cap was especially hard hit losing 14.4% in FY20. Positive performers for the year included large cap equity (+7.4%), core fixed income (+9.9%) and private equity. One of our alternatives, the Energy Debt fund lost nearly 35% for the year, as this particular industrial segment was decimated by the slowdown brought on by the pandemic.

The Foundation's current endowment portfolio composition, including target allocations, actual allocations, and market values, as of June 30, 2020, is presented below:

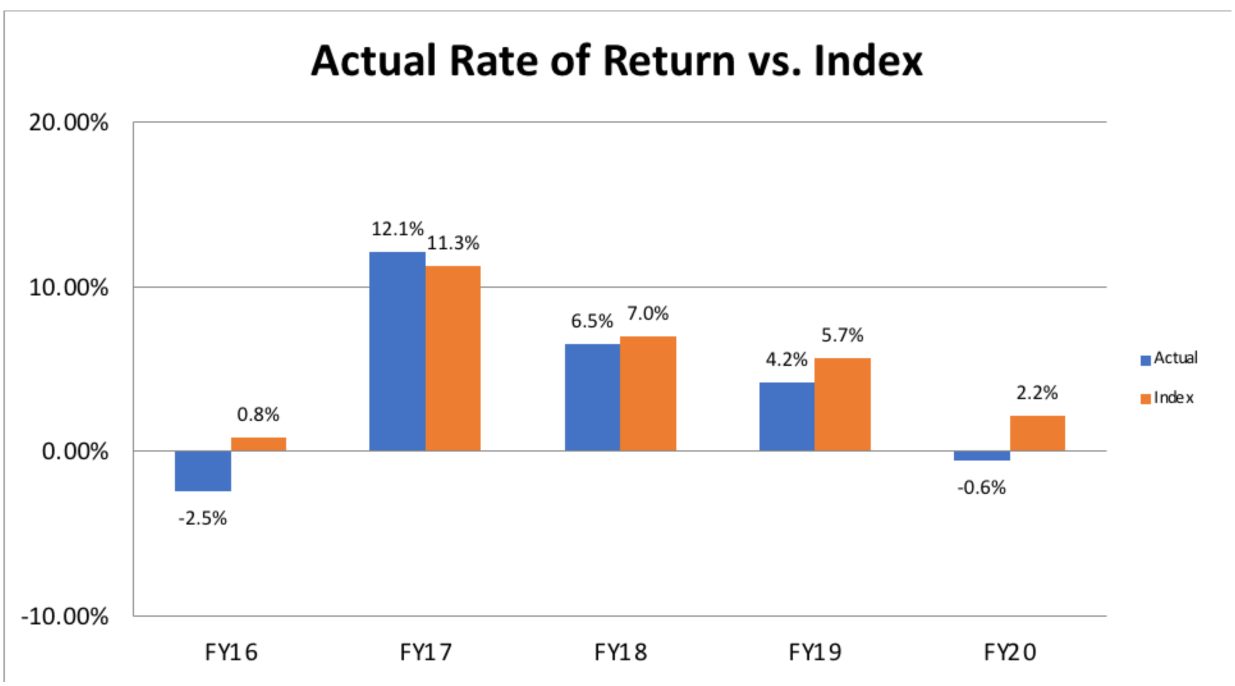
Endowment Portfolio Composition

Asset Class	Target Allocation	Actual Allocation	Market Value June 30, 2020
Equity	**54%**	**55%**	**$47,957,799**
Fixed income	**23%**	**22%**	**19,688,987**
Hedge funds	**8%**	**8%**	**6,733,210**
Private equity	**6%**	**6%**	**5,289,680**
Energy debt	**3%**	**3%**	**2,413,072**
Multi-asset strategy	**6%**	**6%**	**5,609,289**
Totals	**100%**	**100%**	**$87,692,037**

Endowment Value



Endowment Historical Rates of Return



The index is composed of various market indices of like asset classes in the same proportion as the Foundation's approved asset allocation as defined in its Investment Policy Statement (IPS).

Attachments

Emergence Center

Located in the heart of the Vishal Soin Innovation Park just south of Wright State University's main entrance, the Emergence Center will be a place for the greater Dayton region to collaborate with Wright State faculty, students, and one another — where ideas can be unleashed, free from typical institutional and bureaucratic barriers that hinder innovation.

In addition to Wright State University resources, the Emergence Center will offer on-site access to The Entrepreneurs Center and the Small Business Development Center to support business planning, development, and advancement in support of commercializing ideas or products for the university and greater Dayton community.

This will be a one-stop destination where corporate and community partners who join the Emergence Center as tenants or members can access shared facilities and front-door service to the university's resources, including students, faculty, research, continuing education, and more.

- WSU's Entrepreneurship Club will provide concierge and business services to the Emergence Center's clients
- New Media Incubator, The ONEIL Center, and other campus-based, experiential-learning centers will benefit from a pipeline of new clients from the Emergence Center
- Career Services will match students to Emergence Center's clients for internships and co-ops

Features. Functions. Benefits.

Configured to include event spaces, conference rooms, drop-in workspaces, co-working, private offices, and leasable floorplates up to 10,000 square feet, the Emergence Center will offer a variety of space and place-making options and amenities for a vibrant mix of companies and start-ups to work alongside individual entrepreneurs and innovators.

The Emergence Center will have the latest technology infrastructure and next-generation wireless capabilities throughout the building, providing tenants with secure, seamless, turn-key solutions to meet their needs.

The Business Model

Brokerage

The Emergence Center will act as a broker for Wright State University resources that voluntarily opt in to being represented by the Center. Hours of accessibility, pricing, etc. will be determined by the Wright State entities and included in an asset map that will be put together in a menu-like offering for potential clients to consider.

As with any brokerage firm, the Emergence Center will keep a small portion of any fees collected to offset costs incurred.

Offerings, prices, and associated fees will all be spelled out in a memorandum of agreement and kept on file for the duration of the relationship. The Emergence Center will only accept MOUs ultimately signed by persons/positions designated by the provost or president to ensure continuity in the offerings/pricings in their areas.

Host Site

Currently, the Emergence Center consists of 30,000 square feet located at 3070 Presidential Drive. The building will have incubator/start-up space, co-working space, and configurable space for existing companies that would like to be in close proximity to the resources available at Wright State University.

Much like the mission of the Wright State University Foundation, the Emergence Center exists to support the educational mission of the university. In keeping with this mission, the Emergence Center will only accept tenants that demonstrate a commitment to utilizing university resources and can do so at what would be considered "below market" rates because of this commitment.

Grants

The Emergence Center will pursue funding through grants related to economic development and other focus areas specific to its mission with a goal of complementing, not competing with, the university's external funding opportunities.

Ancillary Services

Other revenue-generating opportunities include centralized printing opportunities for tenants who would pay a per copy/print fee, vending machines, coffee shop, etc.

Workshops & Certifications

The Emergence Center will partner with community and campus-based experts to offer workshops and certification programs covering entrepreneurial, technical, and special-interest topics within a revenue-sharing model.

Membership Model

With only 30,000 square feet available, the Emergence Center is limited in how it can reconfigure its space and the number/type of businesses it can serve. Because of this, there is a need to establish a model in which non-tenants can access the same Wright State resources as tenants. A membership model that is based on the size of a company and/or other criteria will be implemented so they, too, can be considered a "Wright State company."

Expense Side

Because the Emergence Center will be located in an existing Wright State University Foundation asset that is not currently generating any revenue from its available space, there are no new expenses expected from this endeavor. Any physical improvements made for tenants will be recouped through increased lease rates for those tenants.

MEMORANDUM OF UNDERSTANDING BETWEEN THE WRIGHT STATE UNIVERSITY FOUNDATION EMERGENCE CENTER AND [SPECIFIC WSU ENTITY - ACADEMIC DEPARTMENT, LAB, FACULTY MEMBER, etc….]

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between the Emergence Center WSU Entity.

2. **Purpose.** The purpose of this MOU is to establish the terms and conditions under which the Emergence Center will be able to represent WSU Entity to parties external to the Foundation and University.

3. **Term of MOU.** This MOU is effective upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU. This MOU may be terminated, without cause, by either party upon 90 days written notice, which notice shall be delivered by hand or by certified mail.

4. **Responsibilities of Emergence Center.**

- The Emergence Center will actively serve as a broker of described services to third parties.
- Funds received from third parties will be deposited in a Foundation account restricted for the WSU entity, less a brokerage fee.
- A brokerage fee of 10% will be assessed to all fees for service (equipment usage, consulting, etc.) received by the Emergence Center to offset operating expenses.

5. **Responsibilities of WSU entity.**

- WSU entity will provide the following services:
  - ie. Access to the lab/piece of equipment/etc. located in room ## of the building name.
  - ie. Between the hours of ____________ and ____________.
- Costs associated with access:
  - ie. $100/hour for lab/equipment access
  - ie. $25/hour for graduate student supervision
- The Emergence Center should contact the following to facilitate conversations:
  - Person or unit and title
  - Phone number
  - Email address
- Other specific instructions, limitations, etc. that the Emergence Center should know about in representing the WSU entity.

- WSU entity will provide training, insurance and/or any other coverage needed to ensure the safety of any visitors, third party representatives, space, equipment, etc. used in the execution of this MOU.

INTENTIONALLY LEFT BLANK

TO BOTTOM OF PAGE

6. Signatures. In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

Emergence Center

Brandy Foster, Executive Director, Emergence Center
[Name and Title] Date

____
Signature

R. Scott Rash, President and CEO, WSU Foundation
[Name and Title] Date

____
Signature

WSU Entity

Primary Contact ______________________
[Name and Title] Date

____
Signature

Chair, Dean, Provost, President ______________
[Name and Title] Date

____
Signature

MEMORANDUM *Confidential Attorney/Client Privilege*

July 16, 2020

TO: Scott Rash

FROM: Nathan Holmes
Arik Sherk

RE: WSU Foundation -- Emergent Center

This memorandum briefly describes legal considerations for Wright State University Foundation, Inc. (the "Foundation") in connection with its planned creation of the "Emergent Center."

I. Background

The Foundation is an Ohio nonprofit corporation that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and is classified as a public charity under Sections 509(a)(1) and 170(b)(1)(a)(vi) of the Code. The Foundation's Articles of Incorporation provide that it is to be operated exclusively for charitable and educational purposes, including (but not limited to): (i) receiving and holding gifts and grants of money and other property for the benefit of Wright State University ("WSU"); (ii) making gifts and grants to WSU, its faculty and students for educational and research purposes; (iii) otherwise assisting WSU, its faculty and students, and (iv) establishing, undertaking or participating in all manner of programs which accomplish any of the foregoing purposes, which may include the purchase, sale, transfer, exchange and holding of real and personal property.

In furtherance of its tax-exempt purposes as described above, the Foundation intends to create the "Emergent Center" as an innovation district at the "front door" of WSU that will provide educational and employment opportunities to WSU students through a business incubator program. It is expected that space in the buildings operated as part of the Emergent Center will be licensed, on a short-term basis and for favorable rental terms, to start-up companies and other businesses that might not otherwise locate in the area and that will provide educational and work opportunities to WSU students and promote collaboration between those businesses and WSU faculty and students. The Emergent Center is expected to be established and operated in a manner similar to innovation/business incubation facilities established by other colleges and universities (such as, for example, Purdue University's Convergence Center for Innovation and Collaboration).

II. Legal Considerations

Nathan.Holmes@ThompsonHine.com Fax: 937.443.6635 Phone: 937.443.6820

THOMPSON HINE LLP
ATTORNEYS AT LAW
Austin Landing I
10050 Innovation Drive
Suite 400
Dayton, Ohio 45342-4934
www.ThompsonHine.com
Phone: 937.443.6600
Fax: 937.443.6635

A. The Foundation currently holds its existing office building in a limited liability company of which it is the sole member. As part of the Emergent Center, the Foundation will license unused space in its existing office building to start-up companies. For that reason, that limited liability company, Fairborn Office Property LLC, may be re-named WSUF Emergent Center No. 1, LLC.

The Foundation may acquire additional office buildings to license space to start-up companies as part of the Emergent Center. These buildings may include two buildings presently owned by Double Bowler Properties Corp., an affiliate of WSU. If it acquires these buildings, each of them will also be owned in separate limited liability companies, to be named WSUF Emergent Center No. 2, LLC and so on.

Holding the real estate to be utilized for the Emergent Center in separate "single member" limited liability companies makes sense as they are inexpensive to form, simple to operate and will protect the Foundation against lawsuits and claims that may relate to the real estate owned inside the limited liability company.

B. <u>Minimizing Risks of UBTI & Protecting the Foundation's Tax-Exempt Status</u>.

1. <u>Unrelated Business Taxable Income</u>.

While Section 501(c)(3) organizations such as the Foundation generally are exempt from federal income tax, they may still be subject to taxes on any unrelated business taxable income (or "UBTI"). Further, an organization's tax-exempt status can be threated if it receives a significant portion of its income or revenue from unrelated business activities or if a significant portion of its activities are unrelated business activities. Generally, UBTI is a tax-exempt organization's net income from business activities that are regularly carried on that are not substantially related to the organization's exempt purposes. Certain rents and other passive income may be excluded from UBTI, although that same passive income can also be included as UBTI if received from certain related parties or if it is derived from property acquired through debt financing. As such, the best way to minimize the risk of UBTI and to protect the Foundation's tax exemption in connection with the proposed Emergent Center is to ensure that the activities of the Emergent Center are "substantially related" to the Foundation's tax-exempt purposes. In this regard, it should be noted that while the single-member limited liability companies that will hold the real estate used in the Emergent Center will be treated as separate entities from the Foundation for state law purposes, those single-member liability companies will be disregarded for purposes of UBTI and the Foundation's federal income tax exemption.

Based on our review of the published guidance and private letter rulings issued by the IRS in related situations, the most important factors in demonstrating that the activities of the Emergent Center are substantially related to the tax-exempt purposes of the Foundation are likely to be the following:

- Limiting the Emergent Center's tenants/participating companies to businesses that will provide educational and work opportunities for WSU students and opportunities for collaboration with WSU faculty, and ensuring that those opportunities are actually used by WSU students and faculty;

- Demonstrating that the Emergent Center's tenants/participating companies provide a high educational value to WSU students; for example, because they are start-up companies that provide opportunities to learn entrepreneurial skills, because they will provide opportunities for scientific research by WSU students, because comparable opportunities are otherwise not readily available in the local area, because their businesses are a particularly good fit with WSU degree programs, etc.

- To the extent that rental terms at the Emergent Center are below market rates, demonstrating that the benefit to participating companies is important to serving educational and charitable purposes; for example, by providing educational opportunities for WSU students with start-up companies or other businesses that may have difficulty attracting capital, and by using short-term licenses, rather than longer-term commitments.

2. Transactions with Insiders.

To further protect its federal income tax exemption, the Foundation must take care in any transactions involving "insiders" to the Foundation, such as Foundation directors or officers and related persons. So, for example, any license of Emergent Center property to a business that is related to a Foundation insider should not be undertaken except in compliance with applicable Foundation conflict of interest policies, and the financial terms of any such license or other arrangement with an insider to the Foundation should be structured to ensure that the Foundation receives a fair market value rate for the services/goods provided under the arrangement.

C. IRS Form 990 Reporting.

In connection with its annual Form 990 information return filings, the Foundation and its tax return preparers will need to give attention to the disclosure of the activities of Emergent Center. Form 990 requires, among other things, that tax-exempt organizations disclose information regarding related parties (such as the single-member limited liability companies) and new activities of the organization. As such, the Form 990 filing process provides an opportunity for the Foundation disclose those activities to the IRS in a manner that highlights the importance of the Emergent Center to the achievement of the Foundation's tax-exempt purposes.

D. Ohio Commercial Activity Tax.

The State of Ohio imposes a "commercial activity tax" on the gross receipts of most businesses. Gross receipts received directly by the Foundation generally are not subject to the Ohio commercial activity tax. However, for purposes of the commercial activity tax, single-member LLCs owned by the Foundation are treated as separate business entities that may need to register with the Ohio department of taxation and pay commercial activity on rents and other gross receipts. The Foundation's tax return preparers may be best positioned to assist the Foundation with respect to Ohio commercial activity tax matters.

E. Real Property Tax Treatment.

Ohio Revised Code Section 5709.12 provides for real estate owned by a by 501(C)(3) tax exempt charitable institution and used for its core activity to be exempt from real estate taxation.

On this basis, the Foundation applied for, and received, a real estate tax exemption for its existing office building, except for that portion of the building that it leases to a non-profit tenant that is not using its space in a manner that furthers the tax-exempt purposes of the Foundation.

With respect to space that is licensed to start-up companies as part of the Emergent Center, for that portion of any building owned by the Foundation to be exempt from real estate taxation, the Foundation will need to convince the Ohio Tax Commissioner, pursuant to Ohio Revised Code Section 5709.121(A)(2), that the space is made available by the Foundation to start-up companies under the direction or control of the Foundation for use in furtherance of or incidental to its tax-exempt purposes and not with the view to profit.

Within the confines of our discussion earlier, it appears that the Ohio Tax Commissioner could determine that the licensing by the Foundation of space to start-up companies is in furtherance of its tax-exempt purposes and, because the rents payable under the licenses will be below market rates, that the licensing of space is not with a view to profit. On the other hand, it is unclear that the use of the space by the start-up companies will, for purposes of the statute, be under the "direction or control" of the Foundation.

Note that the determination by the Ohio Tax Commissioner is primarily an issue of fact to which the Ohio courts will defer to the Ohio Tax Commissioner absent an abuse-of-discretion.

F. <u>General Implications for WSU</u>.

The Foundation is nonprofit corporation that operates independently from, and is not under the control of, WSU. However, under the current Code of Regulations of the Foundation, two representatives designated by the Chair of the WSU Board of Trustees from among the then current trustees of WSU are to serve as Trustees of the Foundation with voting rights and the President of WSU is designated as a nonvoting Trustees of the Foundation. In addition, it has been proposed that the WSU Vice President of University Advancement will serve as an ex-officio (voting) member of the Foundation's Board of Trustees and will also serve as a voting member of the Foundation's Executive Committee. While these arrangements give WSU some influence on the governance of the Foundation, WSU will not have the ability to control decisions made by the Board or Executive Committee, as the WSU Trustees will not have a majority of the votes in either case.

In addition, the employees of the Foundation are no longer paid or employed by the University, which serves to establish a greater deal of autonomy by the Foundation.

While the Foundation is an independent entity, the WSU leadership is concerned with the operations of the Foundation and the how the operations of the Foundation my impact WSU, as expressed in the lengthy negotiations between WSU and the Foundation over the Memorandum of Agreement governing the relationship between WSU and the Foundation.

From a strictly legal perspective, the operation of the Emergent Center by the Foundation (including the licensing of space in various Foundation buildings through separate limited liability companies), as a separate legal entity, should shield WSU from direct legal responsibility for legal problems arising from the operation of the Emergent Center.

However, given that the Emergent Center will be operated by the Foundation for the benefit of WSU students and faculty, and that WSU will have Board and, perhaps, Executive Committee representation, it is not unfathomable that a creative lawyer might seek to bring the WSU into a lawsuit as a defendant in any action against the Foundation arising from the operation of the Emergent Center. On the other hand, this can be said about any operations of the Foundation.

The more likely concern that WSU may have is that the operation of the Emergent Center might, in some way, results in public embarrassment to WSU. It is hard to see that occurring if the Emergent Center is operated in a manner that protects the Foundation's tax-exempt status, as previously discussed, but WSU should be properly briefed as to the plans for the operation of the Emergent Center.

From: Holmes, Nathan <Nathan.Holmes@thompsonhine.com>
Sent: Tuesday, June 30, 2020 9:06 AM
To: Sherk, Arik <Arik.Sherk@thompsonhine.com>; Wall, Andrea <andrea.wall@wright.edu>; Rash, Scott <scott.rash@wright.edu>; Batson, Bob <robert.batson@wright.edu>
Subject: RE: Wright State University Foundation Employee Handbook

As a follow-up to Arik's note--

We reviewed the handful of private letter rulings issued by the IRS in connection with university-related business incubator programs, and few key considerations emerge from those rule. At a high level, those considerations include:

- Ensuring that the program is operated in a way that furthers the university's educational mission. Typically, this involves limiting the tenants/participating companies to businesses that will provide educational opportunities for the university's students (and in some cases, also opportunities for collaboration with university faculty), particularly where those opportunities would be difficult to find in the area, in the absence of the program.
- To the extent that lease terms will be below fair market value, it is important that the tenants not be "insiders" with respect to the foundation (e.g., companies related to foundation leadership), and it can also be helpful if any below-fair market terms are limited to start-up ventures or businesses that otherwise may face challenges in attracting capital.

I look forward to discussing in more detail when convenient.

Best,

Nathan E. Holmes | Partner | **Thompson Hine LLP**
Office: 937.443.6820 | **Mobile:** 937.307.9683
Email: nathan.holmes@thompsonhine.com
Web: http://www.thompsonhine.com

MEMORANDUM

August 31, 2020

TO: Scott Rash

FROM: Nathan Holmes
Arik Sherk

RE: WSU Foundation – Raider Food Pantry, Inc.

This memorandum briefly describes legal considerations for Wright State University Foundation, Inc. (the "Foundation") in connection with the planned formation of Raider Food Pantry, Inc.

I. Background

The Foundation is an Ohio nonprofit corporation that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and is classified as a public charity under Sections 509(a)(1) and 170(b)(1)(a)(vi) of the Code. The Foundation's Articles of Incorporation provide that it is to be operated exclusively for charitable and educational purposes, including (but not limited to): (i) receiving and holding gifts and grants of money and other property for the benefit of Wright State University ("WSU"); (ii) making gifts and grants to WSU, its faculty and students for educational and research purposes; (iii) otherwise assisting WSU, its faculty and students, and (iv) establishing, undertaking or participating in all manner of programs which accomplish any of the foregoing purposes, which may include the purchase, sale, transfer, exchange and holding of real and personal property.

For a number of years, a food pantry has been operated for the benefit of WSU students who are experiencing hunger or food scarcity. It has been proposed that, going forward, this food pantry activity will be operated by a new Ohio nonprofit corporation to be formed, which will be named Raider Food Pantry, Inc. ("RFP"). RFP will seek tax exempt status under Section 501(c)(3) of the Code and public charity status under Sections 509(a)(1) and 170(b)(1)(A)(vi) as an organization that derives a substantial portion of its support from gifts, grants and contributions from the general public, other publicly supported organizations and governmental sources. This approach has been approved by the Foodbank, a Section 501(c)(3) public charity that will provide vital support to RFP.

The Foundation will be the sole member of RFP and as such, the Foundation will elect all of the members of the Board of Directors of RFP, with the Board of Directors of RFP, in turn, electing RFP's officers (President, Treasurer, Secretary). While some or all of the directors and officers of RFP may consist of individuals who are employees of the Foundation or of WSU, neither RFP's organizational documents nor

Nathan.Holmes@ThompsonHine.com Fax: 937.443.6635 Phone: 937.443.6820 4848-5051-1817 any other binding arrangements will require any RFP directors or officers to have any relationship whatsoever with the Foundation or WSU. RFP will be operated as a separate nonprofit corporation and a separate charity from the Foundation, but at all times, the Foundation will maintain the authority to control the direction of RFP through the Foundation's power to elect RFP's Board of Directors.

II. Legal Considerations

A. RFP Corporate Governance. RFP will be established as an Ohio nonprofit corporation and will exist as an entity separate from both the Foundation and WSU. The Foundation, however, will maintain indirect control over RFP by electing RFP's Board of Directors. To maintain appropriate separation of legal entities it will be important for RFP to observe normal corporate formalities, such as holding regular meetings of RFP's Board of Directors and ensuring proper documentation of corporate actions. In their roles and directors and officers of RFP, the individuals occupying such positions will be subject to fiduciary duties of loyalty and care.

B. Steps for RFP Formation and Tax Exemption. The following briefly describes the basic steps necessary to form RFP as an Ohio nonprofit corporation and for RFP to apply for tax-exempt status:

1. File articles of incorporation with the Ohio Secretary of State to create RFP as an Ohio nonprofit corporation.

2. The Foundation elects the initial Board of Directors of RFP, and the duly elected Board of Directors appoints the following officers of RFP: president, treasurer and secretary.

3. Submit Form SS-4 to the IRS to get a tax ID number (EIN) for RFP.

4. Other basic organizational documents of RFP to be adopted, including RFP's Code of Regulations (bylaws) and conflict of interest policy.

5. Tax exemption application (Form 1023) to be filed electronically with the IRS to request tax-exempt status for RFP under Section 501(c)(3) of the Code and public charity status under Sections 509(a)(1) and 170(b)(1)(a)(vi) of the Code. Assuming that the IRS makes a favorable determination, RFP's tax-exempt status will relate back to the date it was incorporated (i.e., the date the articles of incorporation were filed with the Ohio Secretary of State).

6. Once a favorable determination letter has been received from the IRS, register RFP as a charity with the Ohio Attorney General (by an online filing through the OAG's website).

C. IRS Form 990 Reporting and Annual Charitable Reporting.

As a separate nonprofit corporation and tax-exempt charity, RFP will need to file its own annual Form 990 information returns with the IRS. The Ohio Attorney General will also require ongoing annual reporting, which is done online through the OAG's website).

D. General Implications for Liability of the Foundation and WSU.

RFP will be a nonprofit corporation separate from both the Foundation and WSU, but the Foundation will have indirect control over RFP through the Foundation's ability to elect the Board of Directors of RFP.

From a strictly legal perspective, the operation of the food pantry by RFP, a separate legal entity that is controlled by the Foundation, but not by WSU, should shield WSU from direct legal responsibility for legal problems that may arising from RFP's activities. RFP's status as a separate legal entity should also shield the Foundation from direct legal liabilities arising from the operation of the food pantry by RFP, but to a lesser extent due to the control the Foundation will have over RFP and the possibility of veil piercing claims.

However, as to WSU, given that RFP will be operated as a charity for the benefit of WSU students who are experiencing hunger or food scarcity, it is not unfathomable that a creative lawyer might seek to bring the WSU into a lawsuit as a defendant in any action against the Foundation arising from RFP's operations. It is hard to see that occurring if RFP is operated in a manner consistent with its tax-exempt status, as previously discussed, but WSU should be properly briefed as to the plans for the operation of the food pantry by RFP. Of course, if the Foundation cedes any control rights to WSU over RFP, WSU could become more susceptible to claims for liability.

Giving to Wright State

Make a Gift

News for Our Donors

July 29, 2020—Wright State University Foundation helps university during challenging times

The foundation takes an important step in reducing its reliance on Wright State for operating support

During the COVID-19 pandemic, higher education is facing unprecedented challenges and Wright State University is no exception. To help the university focus more of its resources on its core academic mission, the Wright State University Foundation Board of Trustees recently approved a five percent Gift Administration Fee on all non-endowed gifts.

The fee will allow the Wright State University Foundation, which is a separate 501(c)3, to begin reducing its reliance on university funding for its operations. Revenue from the fee will help offset the foundation's cost of doing business, which includes fundraising, donor stewardship, and gift management.

"Discussions about implementing a gift administration fee have been underway for several years now," said Scott Rash, president and CEO of the Wright State University Foundation. "With the university's desire to focus more of its resources on its core academic mission, which is being challenged by the COVID-19 pandemic, this is the right time to move forward. By providing less funding to the foundation for fundraising operations, the university can now shift these much-needed dollars into supporting and educating Wright State students."

According to Bill Bigham, interim vice president for advancement, implementing an administration fee on gifts is a common practice by various foundations for institutions of higher education, both nationally and in Ohio.

"The fee will help us to continue to provide a high-quality experience for all of our donors," said Bigham. "Our donors have been incredibly generous in supporting our students, and we want to ensure that they receive the very best in both service and accountability."

- Frequently Asked Questions about the Gift Administration Fee (PDF)
- Gift Administration Fee Policy (PDF)
- Wright State University Foundation Gift Management and Fees (PDF)

WRIGHT STATE GIVING
Advancement, University
Location: 3070 Presidential Drive, Suite 300
Postal Address: Wright State University Found
Foundation Building
3640 Colonel Glenn Hwy.
Dayton, OH 45435
Phone: 937-775-2251
Fax: 937-775-2736
Email: giving@wright.edu

Gift Administration Fee – Frequently Asked Questions

Q. What is the Wright State University Foundation's gift administration fee?
A. The assessment on non-endowment gifts is our cost of being accountable to you and our other donors. This accountability includes our commitment to provide timely gift receipts, accurate records, expert management of gift funds, and efficient disbursement of gift funds to programs at Wright State University.

Q. How much is the administration fee?
A. Each donation to the Wright State University Foundation is assessed a one-time administrative fee equal to 5% of donations to non-endowed funds.

Q. Why does the foundation have a gift administration fee?
A. The assessment allows the Wright State University Foundation to reduce its reliance on direct funding for its operations from Wright State University, thus freeing university funds for education. Revenue from the assessment is directly related to the foundation's cost of doing business. Effective fundraising, donor stewardship, and gift management requires deployment of financial resources to cover direct costs for the processing, accounting, and disbursement of donated funds.

Q. How are operations of the foundation funded?
A. Foundation operations are funded through a combination of revenue from earnings on short-term funds, endowment management fees, real estate/property management income, and gift assessments.

Q. Do other colleges and universities charge similar assessments? Nationally? In Ohio?
A. A gift assessment of 5% is not uncommon at university foundations throughout the country. While this is new for the Wright State University Foundation, many other institutions and their associated foundations have had a similar fee for some time. There are other foundations associated with public universities in Ohio that have similar assessments as well.

Q. The local non-profit organizations I support don't charge gift fees. What's the difference?
A. The difference is primarily one of terminology. All community organizations have operating costs. In general, revenue from contributions helps in part to support them—whether or not a formal gift "fee" is identified. There are a number of human service organizations, for example, which can charge fees of 15% or more.

In the non-profit sector, best practice standards hold that operating costs in the range of 15-20% are considered to be excellent, assuring that approximately $.80 of every dollar contributed goes to providing direct services. By comparison, $.95 (as of 7/1/2020) of each dollar you give to the Wright State University Foundation gets put to work by the university for the specific purpose you choose to support.

Q. How often does the gift assessment change?
A. The foundation's funding sources are recommended by our finance and investment committee

and approved by the Wright State University Foundation Board of Trustees. The finance and investment committee reviews the gift assessment on an annual basis. In order to assure budgetary and financial stability, it is changed only rarely.

Q. Can the gift assessment be waived?
A. If a gift is made by a private foundation that has a written policy stating it will not pay gift fees, the Wright State University Foundation will waive the fee.

Q. Does the Wright State University Foundation charge other fees?
A. Like the vast majority of other foundations, we charge an annual fee to manage endowed funds that are invested in perpetuity. Because we want to maximize our endowment's growth over time, we keep this annual management fee to a minimum, currently 1.5% of the market value of the endowment.