

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.