

AMENDMENTS TO "AGREEMENT OF MERGER AND PLAN OF TRANSITION" - UALR

WHEREAS, the BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS, afterwards referred to as "UA", and the BOARD OF TRUSTEES OF LITTLE ROCK UNIVERSITY, afterwards referred to as "LRU", on August 17, 1967, executed a document of twenty-one pages entitled "Agreement of Merger and Plan of Transition" for the purpose of merging the institution now known as "Little Rock University" into the institution known as the "University of Arkansas"; and,

WHEREAS, Paragraph XXXII of the aforesaid "Agreement of Merger and Plan of Transition" reflected the agreement and understanding of the parties that further refinement of this document may become desirable, and pledged themselves to accept amendments thereto; and,

WHEREAS, the 1969 session of the General Assembly of Arkansas has enacted certain legislation providing for this merger, and this "Agreement" should be amended in accordance therewith;

NOW, THEREFORE, the above parties hereby mutually agree that the "Agreement of Merger and Plan of Transition" described above shall be specifically amended in the following particulars:

1. Paragraph I.(f), Page 3---The provision here set the "Effective Date" of the merger as a date not earlier than July 1, 1969, selected by UA, and if a date later than that one, stated that it should be July 1 of such later year. Act 35 of 1969 provides that the merger is to become effective July 1, 1969, or as soon thereafter as is practicable, the transfer being accepted by the Board of Trustees of the University of Arkansas only if an appropriation of State funds sufficient for the support of the merged institution be enacted by the General Assembly. It is now apparent to both parties that July 1, 1969, is not a practicable date for the following reasons:
  - (1) July 1, 1969, would be a date in the middle of the Summer term of academic instruction, planning for which preceded this legislation, and a beginning date on or about the first of a new academic year is more practicable;
  - (2) The emergency clause applicable to Act 390 of 1969, making an appropriation for the "University of Arkansas at Little Rock" failed of approval and therefore State funds will not be available on July 1, 1969, for this campus;
  - (3) The amount appropriated by Act 390 is inadequate for a full fiscal year of operation beginning July 1, 1969, and not in accordance with the standards required by the "Agreement" in Paragraph XIII, in that the appropriation, and the allocations estimated to be available thereunder, is not one "...based upon the formulae of the Arkansas Commission on Higher Educational Finance, which shall be sufficient to operate the resulting institution in the manner that similar State institutions having similar

programs and responsibilities are operated by the State of Arkansas, and with regard to the fact that the resulting institution will be part of the University of Arkansas." The parties have determined, however, that this appropriation, when taken together with the present financing of LRU, including the maintenance of its student fees at or approximating their present level, will permit the merger to become effective at a date later than July 1, 1969, and in compliance with the provisions of Act 35 of 1969. Therefore, the referenced provision shall be changed to read as follows:

(f) "Effective Date" means the date, following the "Date of Transfer", upon which UA shall assume possession and operation of resulting institution, and shall be September 1, 1969.

2. Paragraph I(e), Page 3--The "Date of Transfer" should now be correlated with the new "Effective Date" stated above. The "Date of Transfer" governs the time when legal transfers of assets shall be made. The referenced provision shall be changed to read as follows:

"Date of Transfer" shall mean that date, prior to the "Effective Date", on which the transfer of titles to assets shall be substantially completed.

3. Paragraph V, second Paragraph, first sentence, Page 5--The provision that the Board of Visitors is required to meet at least once each month appears to be too inflexible. Therefore the referenced provision shall be changed to read as follows:

The Board of Visitors shall hold regular monthly meetings except during the summer months and then at its option.

4. Paragraph VIII, Page 10--Since the date this Agreement was executed, the University has placed into operation in Little Rock the Graduate School of Social Work. It is suggested that consideration be given to including that educational unit within the provision here following the words "the Graduate Center". Therefore, the referenced provision shall be changed to read as follows:

UA will give consideration as soon as it is practicable to do so to the possible inclusion in the resulting institution of UA divisions now established and operating in Little Rock, including the Industrial Research and Extension Center, the Graduate Center, the Graduate School of Social Work,....

5. Paragraph VIII, Page 10--Since the date of this Agreement legislation has been enacted changing the name assigned by the legislature to the Little Rock operations of the School of Law. The Board of Trustees of UA has not directed any change in the approved curriculum

of the School which consists of only night classes. The legislation in question, neither sought or approved by UA, was H.B. 609, signed by the Governor on March 14, 1969, as Act 262 of 1969. It provides that the "Evening Division of the University of Arkansas School of Law at Little Rock" shall be known as "The Little Rock Division of the University of Arkansas School of Law." The Act does not attempt to set the curriculum or the hours at which courses shall be taught. A technical correction is suggested so that the Agreement will refer to the educational unit under the title assigned it by this legislation. The language "the Evening Division of the School of Law" should be deleted and the new title included at that place. Therefore, the referenced provision shall be changed to read as follows:

UA will give consideration as soon as it is practicable to do so the possible inclusion in the resulting institution of UA divisions now established and operating in Little Rock, including the Industrial Research and Extension Center, the Graduate Center, the Graduate School of Social Work, the Graduate Institute of Technology, and the Little Rock Division of the University of Arkansas School of Law, excepting only the Medical Center and the Agricultural Extension Service.

6. Paragraph IX, first sentence, Page 10--The provisions for recognizing faculty and staff contracts of employment, faculty tenure rights and academic ranks, were based upon the assumption the merger would occur on a July 1 rather than on September 1, and the status determination date based upon approval of the appropriation measure. It now appears that a determination date based upon the academic year would be more appropriate. Therefore, the referenced provision should be changed to read as follows:

UA will accommodate in good faith the contracts of employment entered into between the faculty and staff members of LRU and LRU, including all employment contracts the performance of which extends beyond the "Effective Date", and tenure rights and academic ranks held as of the completion of academic year 1968-1969, which contracts shall be acquired from LRU as a liability of resulting institution, and the resulting institution shall provide appropriate fringe benefits during service with UA commensurate with those provided for other UA faculty and staff.

7. Paragraph XI, 1st sentence, Page 11--Student tuition and fees must remain, for the present, at or approximating their present levels because the State appropriation is insufficient for the purpose of operating the institution as other State institutions having similar programs are operated. The referenced provision shall be changed to read as follows:

Student tuition and fees at the resulting institution shall be set at approximately the amounts charged by LRU prior to the merger, and shall be gradually reduced as financial resources of the resulting institution, including State allocations in payment of its appropriations, become available in amounts sufficient to justify their reduction to levels comparable to those charged on other campuses of UA; provided, however, that any tuition and fees which, prior to the effective date of this merger, shall have been pledged for the discharge of bonded indebtedness, shall not be reduced so long as the particular indebtedness shall be outstanding.

8. Paragraph XIII, Page 12--This paragraph provided that the merger was to be completed only when the General Assembly shall have appropriated funds for the purpose in an amount, based upon formulae of the Arkansas Commission on Higher Educational Finance, which shall be sufficient to operate the resulting institution in the manner that similar State institutions having similar programs and responsibilities are operated by the State of Arkansas, and with regard to the fact that resulting institution will be a part of the University of Arkansas. Act 35 of 1969 conditioned the merger upon passage of an appropriation measure providing State funds sufficient for the support of the merged institution. It is recognized that the funds stated in the "Agreement" have not been provided. The extent of funds required by the appropriation legislation may be considered as "sufficient" only if student tuition and fees remain at or approximating the present charges made by LRU, and other LRU resources and financial support continue at their present levels. It is on that understanding that the parties deem the requirement of Act 35 to be met. The referenced provision shall have added at the end thereof the following:

The parties hereto recognize that the level of State support stated in the "Agreement" has not been provided in the legislation enacted by the General Assembly in its regular session of 1969. The level of support required under Act 35 of 1969 is deemed to exist only by the understanding that student tuition and fees remain at or approximating the present charges now made by LRU, and the other LRU resources of financial support continue at the pre-merger levels. The parties recognize that State appropriations, and the allocations thereof, must be substantially increased above those stated in Act 390 of 1969 and allocated thereunder before the objective of making student tuition and fees comparable to those charged on other campuses of UA may be achieved. The achievement of the other objectives stated in the "Agreement" shall be dependent upon adequate financial support.

9. Paragraph XV, Page 13--Since the date of the audit has been changed to close with the period ending the day before the "Effective Date", it will be impossible for the certificate of C.P.A. to be available prior to the "Effective Date." It is recognized that the audit will be needed in making determinations about assumption of particular liabilities. Therefore, to give sufficient time for these matters, the referenced provision should be changed to read as follows:

Liabilities of LRU to be assumed by UA, and the manner of assuming them will be determined by mutual consent of the parties as reasonably soon as possible consistent with the completion of the audit of LRU provided herein.

10. Paragraph XVIII, Page 14--Since the execution of the "Agreement", Mr. J.E. Pomfret, mentioned in this provision, has died. A deletion of his name is required. The referenced provision at the end of the first sentence shall read as follows:

at the following address: ...Secretary, Board of Trustees, University of Arkansas, Fayetteville, Arkansas.

11. Paragraph XIX, 1st three lines, Page 14-15--More than fifteen days have elapsed following approval of the appropriation act and the steps indicated have not occurred. A new time for these events should be assigned. The referenced provision shall be changed to read as follows:

LRU as soon as reasonably possible shall furnish to UA the following: ....

12. Paragraph XIX, subsection (d), Page 15--It now appears that a listing of all contracts and commitments which involve payment of more than \$5,000.00 each, and which have not been completely performed, may be too onerous for the benefits to be derived, particularly since the audit will reflect liabilities and the time lapse between the present date and the "Effective Date" is less than three months. On the other hand, UA has need of information concerning long-term commitments, particularly because of State laws restricting such contracts, and in order to plan their discharge where of sizeable amounts. Therefore, it is suggested that the referenced provision be changed to read as follows:

(d) Complete information relating to the following: All patents, trademarks, copyrights, policies of insurance, all contracts and commitments the performance of which would extend beyond June 30, 1970, a current list of employees ....

13. Paragraph XX, 1st sentence, Page 15--It has been determined that the regular annual audit of LRU will occur as of the close of business on August 31, 1969. To prevent an additional audit, the procedure should be correlated with that date. The referenced provision shall be changed to read as follows:

LRU shall cause to be made a complete audit and examination of that institution by independent Certified Public Accountants, applicable to the year ending with the close of business on August 31, 1969, causing to be prepared a certified statement reflecting financial condition, including balance sheets and income statements, and an examination of all securities held and a certificate that such securities and endowment funds are intact, and LRU shall furnish copies to UA upon receipt thereof.

14. Paragraph XX, 2nd sentence, Page 15-16--The date of the audit has been changed as described above. To correlate that change, the second sentence must be changed in regard to the procedural step. The referenced provision shall be changed to read as follows:

As of the "Date of Transfer", LRU shall transfer all funds and assets to UA, and on the "Effective Date", or as soon thereafter as the certificate is received and examined shall certify that all funds and assets shown in the certificate of Certified Public Accountants as described above are intact and on hand, or otherwise accounted for.

15. Paragraph XXI, Page 16--It is suggested that the \$10,000.00 restriction on incurring each additional debt or contractual obligation is too restrictive for the period from approval of the appropriation (April 10, 1969) to September 1, 1969, when the merger will become effective. Therefore, it is suggested that the referenced provision be changed to read as follows:

Prior to the "Effective Date", LRU will not contract or incur any additional debt or contractual obligation which in each instance may exceed the sum of Fifty Thousand Dollars (\$50,000.00) without advance approval of UA, nor ....

16. Paragraph XXXV, (NEW)--LRU has in process two revenue bond issues which are a part of the commitment made for construction of new buildings which are at this time 80% or more complete. The bond indentures have been prepared upon the assumption that these bonds will be issued prior to the merger, in the name of LRU, and will become liabilities the assumption of which will be considered at the time of the merger. One bond issue will be purchased by Housing & Urban Development, a federal agency, and the other by the U.S.

Department of Health, Education and Welfare. Therefore, it is suggested that the referenced provision be added to the "Agreement", and shall read as follows:

Nothing herein contained shall restrict LRU in the execution and completion of its loan contracts heretofore made with Housing & Urban Development, a federal agency, and with the U.S. Department of Health, Education and Welfare, relating to the respective construction projects to which those loan contracts relate, the bonds for which are to be issued prior to the "Effective Date" of the merger.

17. Paragraph XXXVI (NEW)--It is suggested that there be added a provision by which the parties would ratify their agreement and confirm any irregularities. Therefore it is suggested that the referenced provision be added to the "Agreement", and shall read as follows:

Except for the specific amendments agreed to by LRU and UA through execution of the within document, amending the "Agreement of Merger & Plan of Transition" entered into by them on the date above set out, it is the intention of both parties, and they here so state and provide, that all other provisions of the "Agreement of Merger & Plan of Transition" shall be and remain in full force and effect, and they declare that they ratify and confirm same, and that in doing so they intend to ratify any irregularities which may have occurred in the performance thereof.

THIS AMENDMENT IS ENTERED INTO ON THIS THE 15 DAY OF July , 1969, BY AND BETWEEN THE UNDERSIGNED INSTITUTIONS OF HIGHER LEARNING EACH OF WHOM EXECUTES SAME BY THE CHAIRMAN OF ITS BOARD OF TRUSTEES, PROPERLY AUTHORIZED, AND ATTESTS BY ITS SECRETARY OF ITS BOARD OF TRUSTEES.

LITTLE ROCK UNIVERSITY

ATTEST:

\_\_\_\_\_  
SECRETARY

-SEAL-

BY: \_\_\_\_\_  
E. GRAINGER WILLIAMS,  
CHAIRMAN  
BOARD OF TRUSTEES  
LITTLE ROCK UNIVERSITY, INC.

BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ARKANSAS

ATTEST:

\_\_\_\_\_  
SECRETARY

-SEAL-

BY: \_\_\_\_\_  
D.P. RANEY  
CHAIRMAN  
BOARD OF TRUSTEES  
UNIVERSITY OF ARKANSAS

July 15, 1969