

MEMORANDUM

September 23, 2007

To: Board of Trustees
Polytechnic University

cc: Richard Thorsen, PhD
T.C. Westcott

From: George Likourezos, President
Polytechnic University Alumni Association, Inc.

Re: Supplement to Polytechnic Alumni Position Paper on Proposed
Merger with NYU

**Terms for Transforming Polytechnic University into a Tier-I Engineering Institution:
The Stated Goal of the Current Polytechnic-NYU Negotiations**

I. Introduction

The leadership of Polytechnic University Alumni Association, Inc. ("Poly Alumni") has received hundreds of emails and telephone calls from its members regarding the proposed acquisition of Polytechnic University ("Polytechnic") by New York University ("NYU"). The majority of these members oppose to the acquisition of Polytechnic by NYU.

They, along with the Alumni leadership, remain concerned that the Memorandum of Core Commitments ("MCC"), which sets forth core terms "which cannot be deviated from," fails to protect Polytechnic's interests in connection with the proposed merger. Specifically, the MCC:

- a. fails to recognize the value of Polytechnic to NYU but provides that NYU will have sole unfettered ownership of Polytechnic's assets;

- b. fails to specify that NYU will make concrete, specific investments in Polytechnic which will improve Polytechnic's infrastructure and laboratories, attract esteemed faculty, facilitate additional investments from private and public sources, increase retention, increase enrollment, and move Polytechnic to a Tier-I engineering institution;
- c. fails to make Polytechnic a school of NYU immediately upon ratification of the Merger Agreement;
- d. fails to guarantee the preservation of the Brooklyn campus;
- e. fails to acknowledge the Polytechnic Alumni Association and the interests of its 30,000 members; and,
- f. fails to address the issues identified in the Alumni Association's Position Paper dated September 6, 2007.

These deficiencies must be addressed for the benefit of Polytechnic before the Alumni Association will consider the proposed acquisition of Polytechnic.¹ As Chairman Craig Matthews stated in the alumni conference call on September 19, 2007, the MCC is not a legally binding document.² Therefore, Polytechnic's negotiating team is not legally obligated by any previous understanding it may have had to the contrary that the MCC terms cannot be deviated from and negotiate from a position of strength; the negotiating team should not be fettered or confined to the terms of the MCC or to any timetable.

¹ This Position Paper addressing Alumni Core Commitments, *infra*, in supplement ("Supplement") to the Poly Alumni Position Paper dated September 6, 2007 should not be construed as a commitment to the proposed merger. The Poly Alumni expressly reserves any and all options, in law or in equity, to pursue remedies it deems necessary to protect the interests of Polytechnic. This Supplement does not in any manner indicate an election of remedies by the Poly Alumni or any approval, express or implied, of the merger or approval of merger negotiations to proceed.

² As with many requests by the Poly Alumni, the administration has failed to provide this information expressly in writing.

The terms set forth in this supplement position paper addressing the Alumni Core Commitments (“ACC”) must be memorialized in the Memorandum of Understanding (“MOU”) currently being negotiated between Polytechnic and NYU. In addition, provisions for the enforceability³ of the terms of the ACC and MOU must be established in any agreement and related legal documents executed in connection with the proposed acquisition of Polytechnic by NYU. In addition, the MOU should provide that the Poly Alumni is a third-party beneficiary entitled to all of the rights and remedies to which the executing parties of the MOU are entitled.

The Alumni Association requests that it be provided on an ongoing basis with previously and subsequently produced working drafts and final drafts of documentation created by or exchanged between Polytechnic and NYU, including the MOU, as well as documentation provided to either side with respect to the merger and as part of each side’s due diligence. Comments to these drafts, which the Poly Alumni would be please to provide, would be of assistance to Polytechnic and its negotiating team.

The Poly Alumni notes with disappointment that the Administration has failed to provide various documents promised to the Poly Alumni and other alumni. These documents include, but are not limited to, (i) records pertaining to any due diligence conducted by the Board or Administration, (ii) any letters of commitment or understanding pertaining to the sale, lease or development of air rights which Polytechnic may own or to which it is entitled, and (iii) updated financial data and projections prepared by Polytechnic, or on its behalf, or relied upon by the

³ At a minimum enforcement mechanisms must include and reserve the right of the parties to seek injunctive relief, and the express recognition and acknowledgement that a breach or threatened breach of the provisions of the merger agreement, or any of the documents on which it is based, may not have a sufficient remedy at law, that damages cannot be ascertained or are inadequate and that injunctive relief may be sought to remedy such breach or threatened breach thereof.

Board, to determine the financial health of Polytechnic, which data has become available subsequent to the May, 2007, Board of Trustees meeting.⁴

It is imperative that the MOU be concrete, clear and complete, thereby eliminating the potential for ambiguities, misunderstandings and differing interpretations as to the rights and obligations of the parties. Any document not meeting this standard will deny Polytechnic's Board the opportunity to consider and vote on a full record. The Alumni Association wants the best for Polytechnic and believes this transaction is of such a high magnitude that it does not permit placing trust over common sense.

The ACC, if adopted and codified into the MOU (and into the Merger Agreement, if the MOU is approved by the two Boards), will ensure that the main motivating factor for the merger, to make Polytechnic a competitive first-rate engineering school, will be achieved. The MOU must ensure that Polytechnic's assets are only transferred under binding and enforceable terms without the option by NYU to disregard the commitments set forth in the ACC. The MOU must legally assure that NYU infuse sufficient capital in Polytechnic, as discussed below, to improve Rogers' Hall to a state-of-the-art "Green" facility,⁵ to upgrade Polytechnic's research laboratories, to create research centers and endowed chairs, to obtain major research grants, to increase enrollment with an increase in entering SAT scores, and so on. The ACC once adopted into the MOU will also ensure the continued existence of the Alumni Association and that its present and future members will enjoy the benefits and privileges given by NYU to its alumni.

⁴ The President and Immediate Past President of the Poly Alumni serve as Advisory Trustees of the Board and are entitled to be provided with all records given or made available or known to the Board. Merely offering review of these documents to the Advisory Trustees is not in compliance with the Board's own rules. Notwithstanding these provisions, the Chairman of the Board expressly directed the Administration to provide such documents which it has refused to do.

⁵ Board of Trustee Member Donald N. Weisstuch stated in an alumni conference call on September 19, 2007 that his analysis and projections as to the cost of renovations of Rogers' Hall were in the range of \$200M. Obviously, this should be the benchmark upon which the MOU is based. The converse of that statement is that any amount less than \$200M is insufficient. Consequently, it is axiomatic that a minimum of \$200M must be dedicated to the renovation of Rogers' Hall.

II. Alumni Core Commitments and Discussion

- 1. Integrate Polytechnic into the NYU community:** NYU must fully integrate Polytechnic into the NYU community upon ratification of the Merger Agreement and establish Polytechnic as a fully entitled member of NYU. The MCC now provides that Polytechnic will be analyzed to determine if it meets NYU's "standards" during an open-ended transition period. This is unacceptable to the Alumni Association.

Polytechnic and NYU must own and operate Polytechnic Institute of NYU jointly.

Contrary to the proposed open-ended transition period or five year sunset provision,

Polytechnic must retain a one-half undivided interest in the continuation of the new university. Thereby, the new entity will preserve the rich tradition of the Polytechnic while moving forward with the new frontier and vision of the NYU-Polytechnic community.

- 2. Specific Investments:** The MOU must set forth specific investments. NYU must expressly acknowledge that an engineering school requires more academic infrastructure than other schools, such as liberal arts schools, law schools, and business schools which only require chairs and a podium. An engineering school requires first-rate research facilities and laboratories to fulfill its mission of providing excellence in engineering instruction and performing cutting edge research. This is essential to attracting students. The initial investment by NYU must enable Polytechnic to begin revamping its research facilities and infrastructure, establishing research centers and endowed chairs, and funding scholarships. These investments must be independent of any consideration or valuation of Polytechnic's assets and sufficient to augment the process of transforming Polytechnic into a Tier-I engineering institution. Without this initial investment,

Polytechnic must reject a merger as nothing will inure to Polytechnic's benefit by just saying it is owned by NYU.

- 3. Investment Timetable:** The MOU must set forth a specific investment timetable to provide for consistent and continuous investments by NYU in Polytechnic, commencing immediately upon ratification of the Merger Agreement. The investment amount and timetable must be based on transforming Polytechnic into a Tier-I engineering institution (See, discussion of initial investment as set forth by the second alumni core commitment). The Poly Alumni recommends that the cash commitment must have a management plan set forth by the Polytechnic Board in consultation with the various Polytechnic stakeholders. An initial investment committed to the renovation of Rogers' Hall must be followed by annual investments, e.g., in the range of \$50-65 million for the first 15 years, to transform Polytechnic into a Tier-I institution. Without investment commitments and timetables, Polytechnic has no guarantee that merging with NYU will enable Polytechnic to implement its Strategic Plan and attain Tier-I status. It warrants repeating that these investments will be needed to undertake initiatives to purchase or lease additional academic and research space, to expand its operations and research areas, to attract esteemed faculty and to establish chairs for such faculty, and so on. Lastly, without such an investment commitment and timetable, Polytechnic is merely walking away from its academic and financial predicament by handing over its keys to NYU without the cash, facilities and infrastructure required to succeed.
- 4. Forever Named "Polytechnic Institute of NYU":** The proposed name of "Polytechnic Institute of NYU" will remain the name of the school in perpetuity and become the name of the school immediately upon ratification of the Merger Agreement.

5. **Brooklyn Campus:** The Brooklyn campus shall remain the main campus of the Polytechnic Institute of NYU indefinitely.
6. **Benefits to Poly Alumni Members:** The alumni of Polytechnic University and its predecessor schools (“Poly Alumni Members”) upon the ratification of the Merger Agreement will enjoy all of the privileges and benefits provided to NYU alumni. Poly Alumni Members must have parity with NYU Alumni and have access to the NYU campuses and resources and enjoy the use of such amenities as NYU’s libraries, research labs, and the Torch Club and meetings rooms. Poly Alumni Members must be permitted to take courses at NYU schools at the NYU alumni-discounted rates. Members of the Polytechnic Alumni can publicly state, if they choose, that they are alumni of NYU and use the NYU name, if they choose, on their resumes. A portion of the investment monies provided in the third alumni core commitment (approximately \$3 million) must be committed to establish and furnish a Polytechnic alumni house at the Brooklyn campus or elsewhere the alumni leadership determines in consultation with the Polytechnic Administration and Board.
7. **NYU Recognition of Poly Alumni:** NYU must recognize through the MOU the Polytechnic Alumni Association as the sole and exclusive organization representing the Polytechnic Alumni and that Alumni of the new Polytechnic will automatically become members of the Polytechnic Alumni Association.
8. **Poly Alumni as NYU Alumni:** The MOU must specify and provide that all of the members of the Polytechnic Alumni Association will be considered NYU alumni, issued NYU alumni membership cards or other identification, and entitled to enjoy the same benefits, rights and privileges of NYU alumni. Annual membership or other fees will not be required; the Polytechnic Alumni Association will continue the current no-dues policy.

9. **Option for NYU Diplomas:** Poly Alumni Members must have the option to receive a new diploma with the new Polytechnic name on it as a school of NYU and entitled to a certification letter by NYU acknowledging the Polytechnic alumnus as an alumnus of an NYU school.
10. **NYU to Fund Poly Alumni Integration:** The MOU must require NYU to fund the integration of the Polytechnic Alumni Association's operations, database, website and records into the NYU resources and systems that would enable the members of the Association to receive NYU mailings, announcements and emails. This core commitment can be in the form of a Special Alumni Gift with the acknowledgement that the very reason for the acquisition of Polytechnic is to make it into a Tier-I engineering institution and that the alumni are an integral part of this stated goal.
11. **Joint Ownership of Real Estate:** The ownership of Polytechnic's real estate must be held jointly by Polytechnic and NYU in perpetuity without any sunset provision or other timetable whereby NYU obtains full control over the assets of Polytechnic University.
12. **Endowment Foundation:** A foundation shall be established independent of NYU to own and manage Polytechnic's endowment.
13. **Polytechnic Assets to Remain Forever Polytechnic Assets:** The MOU must set forth that monies received via the endowment, donations to the new Polytechnic, sale of air rights, sale of intellectual property, and sale of other assets owned by Polytechnic prior to the ratification of the Merger Agreement, as well as assets obtained and sold afterwards by Polytechnic, shall be used solely for Polytechnic's benefit or added to the foundation created via the 12th alumni core commitment as deemed appropriate by the Polytechnic Board.

14. Polytechnic Alumni Composition of Polytechnic Board: The Polytechnic Board must be composed of at least 75% of alumni of Polytechnic and its predecessor schools and alumni of the new Polytechnic. The Polytechnic Board to be the sole decision maker regarding the management and sale of Polytechnic's assets, as well as implementing, overseeing and fulfilling Polytechnic's Strategic Plan and mission, including, but not limited to, determining Polytechnic's offered courses and degrees, and Polytechnic's research areas.

15. Poly Alumni as Third-Party Beneficiary: The MOU must provide that the Poly Alumni is a third-party beneficiary entitled to all of the rights and remedies to which the executing parties of the MOU are entitled.

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