**BEFORE THE WEST VIRGINIA ETHICS COMMISSION**

**IN RE:**

**ROBIN C. CAPEHART,**
**Respondent.**

**COMPLAINT NO. CIC 2012-01**

## CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Robin C. Capehart freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above referenced Complaint.

## STIPULATIONS OF FACT

The following facts are hereby stipulated and agreed upon by the West Virginia Ethics Commission and Robin C. Capehart ("Respondent"), and are to be taken as true and correct:

1. Robin C. Capehart ("Respondent") is the former President of West Liberty University in West Liberty, West Virginia, having assumed that position on July 1, 2007. Mr. Capehart was President of West Liberty University at all times material herein.

2. Respondent was, as President of West Liberty University, a public official and as such is subject to the provisions of the West Virginia Governmental Ethics Act ["Ethics Act"] in W.Va. Code §6B-1-1 *et seq.*

3. At all times relevant herein, Robin C. Capehart engaged in the following conduct in violation of the West Virginia Governmental Ethics Act, Article 2, Chapter 6B, of the West Virginia Code:

From in or about November, 2010, through March, 2012, Respondent solicited private business from a subordinate public employee, Kristin Seibert, who he had the authority to direct, supervise and control, in violation of West Virginia Code §6B-2-5(o). In furtherance of said violation, Respondent engaged in or had authority and control over the following acts:

(a) On or about January 29, 2010, Kristin Seibert was hired effective January 1, 2010, as a "temporary" employee of West Liberty University through June 30, 2010, to produce a show for WLTV entitled "Concert in the Kitchen" at a pay rate of $250 per show. On June 29, 2010, her contract was renewed for the period from July 1, 2010, through June 30, 2011, for the same purpose and at the same rate of pay.

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(b) In or about November, 2010, Respondent and Kristin Seibert entered into a business relationship for the production and promotion of full length motion pictures.

(c) Pursuant to a new contract dated November 12, 2010, but effective November 1, 2010, Kristin Seibert was hired by West Liberty University through June 30, 2011, for "Part-time business management of the University's television station and the production of new programs in cooperation with WLTV's existing staff and students." Ms. Seibert's contract called for her to provide services for a minimum of 28 hours per week, at a pay rate of $2,000 per month.

(d) On December 1, 2010, Respondent organized Hartland Entertainment, LLC, as a West Virginia limited liability company, for profit. Hartland Entertainment, LLC, was member-managed and Respondent was the only person listed with the Office of the Secretary of State of West Virginia as a member.

(e) On December 1, 2010, Respondent and Hartland Entertainment, LLC, organized Flyover Films, LLC, as a West Virginia limited liability company, for profit. Flyover Films, LLC, is member-managed and Kristin Seibert is listed with the Office of the Secretary of State as the manager. The business purpose of Flyover Films, LLC, is stated as "Motion Picture and Sound Recording Industries - Motion Picture and Video Industries (drive-in, postproduction, teleproduction)." The charter for Flyover Films, LLC, remained active at all times material herein.

(f) On or about July 19, 2011, Kristin Seibert and West Liberty University entered into a Professional Services Agreement, effective July 1, 2011, whereby Ms. Seibert would provide consulting services to the university through June 30, 2012, at a pay rate of $4,000 per month.

(g) During the month of March, 2012, Kristin Seibert was actively engaged in her work on behalf of Flyover Films, LLC, as producer of the film, "Random Acts of Christmas," while, during the same time, working on behalf of West Liberty University under the July 1, 2011 - June 30, 2012 contract.

(h) In March of 2012, Kristin Seibert submitted an invoice in the amount of $4,000 for her consulting work on behalf West Liberty University during March, 2012, which was approved for payment by her supervisor on or about March 26, 2012.

(i) On March 28, 2012, the Complaint and Notice of Investigation in this matter were sent via certified mail to Respondent. Said Complaint and Notice of Investigation were received by Respondent on Friday, March 30, 2012. Kristin Seibert was asked to resign from her employment with West Liberty University that same day. She did so, and in return for submitting her resignation, Kristin Seibert was given a promise by Respondent of future employment at West Liberty University.

(j) On or about April 25, 2012, the Chief Financial Officer of West Liberty University requested that Kristin Seibert confirm her termination with a letter of resignation back-dated to February 15, 2012, to make it appear that she had resigned as of February 29, 2012. She complied.



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## RELEVANT LEGAL PROVISION

West Virginia Code §6B-2-5(o) provides, in relevant part, that a public official or public employee may not solicit private business from a subordinate public employee whom he has the authority to direct, supervise or control.

## CONCILIATION OF VIOLATION

I, **ROBIN C. CAPEHART**, President of West Liberty University, freely and voluntarily enter into this Conciliation Agreement. I admit and acknowledge that I violated the West Virginia Governmental Ethics Act (W.Va. Code § 6B-1-1 *et seq.*) by soliciting private business from a subordinate public employee whom I had the authority to direct, supervise and control, in violation of West Virginia Code §6B-2-5(o). In furtherance of the foregoing, I acknowledge and admit that I solicited Kristin Seibert, an employee of West Liberty University to be the Manager of Flyover Films, LLC, an entity organized and owned by me, and to serve as Executive Producer of films for that entity.

In order to resolve this matter, I hereby enter this agreement. I believe it is in my best interest and the interest of the public to resolve this matter without further proceedings. By signing this agreement, I also agree to the imposition of sanctions by the West Virginia Ethics Commission.

I acknowledge and hereby agree that no promise or agreement other than that herein expressed has been made to me. I further acknowledge that in executing this Agreement, I have carefully considered the terms and sanctions; have been afforded the opportunity to consult with counsel; am entering this Agreement of my own free will and accord; and am not suffering from any physical, mental or other condition which prevents the exercise of my judgment with respect to the



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terms of the Agreement.

I additionally acknowledge that I do not have to enter into this Conciliation Agreement. I understand that in lieu of this Agreement, I may challenge, refute and provide a defense on my own behalf to the allegations raised in the Statement of Charges and Notice of Hearing. I understand that if I do not enter into this Agreement, this matter will proceed to a public hearing, and I will be permitted to call witnesses on my own behalf, and to cross examine the witnesses and challenge the evidence presented against me.

I also fully understand that if I do not enter into this Agreement, the Ethics Commission must prove beyond a reasonable doubt that I have violated the West Virginia Ethics Act before imposing any sanctions against me. Notwithstanding these foregoing rights, it is still my desire to proceed with this Agreement and resolve this matter without further adjudication of the merits of the alleged violations.

I understand that for this Conciliation Agreement to be finalized, the Ethics Commission must approve the Agreement and must further make determination concerning the sanctions to impose.

In consideration for the settlement and resolution of this matter, I agree to the imposition of the following sanctions by the Ethics Commission:

a. Public reprimand;

b. Payment to the West Virginia Ethics Commission of Five Thousand Dollars ($5,000) as reimbursement towards the costs of the investigation; and

c. Payment of a fine of Five Thousand Dollars ($5,000).

I further agree to pay the reimbursement and fine in lump sum on or before August 1 , 2015.

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Said payment shall be mailed to West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804.

By signing this Agreement, I hereby acknowledge and agree that the Ethics Commission will impose only the sanctions listed above. In the event that the Ethics Commission issues an Order imposing any sanction exceeding or in addition to those specifically set forth herein, then this Conciliation Agreement shall be null and void.

It is further hereby agreed that if the Ethics Commission fails to approve this Conciliation Agreement, this Agreement shall be null and void and this matter will proceed to a hearing upon the Statement of Charges previously issued.

If the Ethics Commission approves this Agreement, I understand that it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above. I further understand that pursuant to W. Va. Code § 6B-2-4(s), this Conciliation Agreement and the Ethics Commission's Order must be made available to the public.

**WHEREFORE**, the foregoing constitutes the full and complete Agreement between the Parties hereto, and each Party has voluntarily and freely affixed their signature below with the intent to be bound thereby.

Date: 6/4/15

Robert Wolfe, Chairperson
WV Ethics Commission



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Date: 6/2/15

Robin C. Capehart, Respondent

STATE OF WEST VIRGINIA,

COUNTY OF Kanawha

The foregoing instrument was acknowledged before me this 2nd day of June, 2015, by Robin C. Capehart.

My commission expires January 16, 2018.

Jane Elsender Adkins
NOTARY PUBLIC

Official Seal
Notary Public, State of West Virginia
Jane Elsender Adkins
300 Sunshine Lane
Fraziers Bottom, WV 25082
My commission expires January 16, 2018



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**BEFORE THE WEST VIRGINIA ETHICS COMMISSION**

**IN RE:**
**ROBIN C. CAPEHART** **COMPLAINT NO. CIC 2012-01**

**COMMISSION'S ORDER**

After considering the STIPULATIONS OF FACT, RELEVANT LEGAL PROVISION and CONCILIATION OF VIOLATION set forth in the attached Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent as required by W.Va. Code § 6B-2-4(s). In accordance with W.Va. Code § 6B-2-4(r), the Commission imposes the following sanctions against Respondent Robin C. Capehart:

1. A public reprimand shall be issued against Respondent;

2. Respondent shall make payment to the West Virginia Ethics Commission in the amount of Five Thousand Dollars ($5,000.00) as partial reimbursement of the costs of investigation on or before August 1, 2015, and

3. Respondent shall pay a fine to the West Virginia Ethics Commission in the amount of Five Thousand Dollars ($5,000.00) on or before August 1, 2015.

This Order was entered on the 4th day of June, 2015.

Robert J. Wolfe, Chairperson
WV Ethics Commission