



**Board of Governors
FULL BOARD
Via Zoom**

<https://zoom.us/j/95315878065?pwd=VlpIWGJGUk5MSWdjdk9oRE9hTU80UT09>

**Friday, March 26, 2021
9:00 a.m.**

AGENDA

- | | |
|---|-----------------------|
| I. Call to Order | Charles E. Jones, Jr. |
| II. Roll Call | Crystal Walker |
| III. Verification of Appropriate Notice of Public Meeting | Charles E. Jones, Jr. |
| IV. Possible Executive Session under the Authority of West Virginia Code §6-9A-4 to Discuss Legal, Personnel and Property Matters (<i>Action Required</i>) | Charles E. Jones, Jr. |
| V. Approval of Board Resolution and Purchase/Sale Agreement (<i>Action Required</i>) | Charles E. Jones, Jr. |
| VI. Approval of Term Sheet (<i>Action Required</i>) | Charles E. Jones, Jr. |
| VII. Approval of Debt Policy (<i>Action Required</i>) | Charles E. Jones, Jr. |
| VIII. Adjournment | Charles E. Jones, Jr. |

**Board of Governors
West Virginia State University
Full Board**

Date/Time: 3/26/2021 -- 9:00 AM

Location:

<https://zoom.us/j/95315878065?pwd=V1pIWGJGUk5MSWdjdk9oRE9hTU80UT09>

Via Zoom

Purpose: Discussion of bond refinancing and university debt policy.

Notes:

Meeting was approved : 3/19/2021 4:06:07 PM

**AUTHORIZING RESOLUTION
OF THE
WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS
(HBCU Capital Financing Program)**

RESOLUTION AUTHORIZING THE REFUNDING AND REDEMPTION OF ALL OR A PORTION OF THE WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS' \$8,930,000 UNIVERSITY REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2012, AND \$2,185,000 UNIVERSITY REFUNDING REVENUE BONDS, SERIES 2013 A, AND THE ACQUISITION OF THE JUDGE DAMON J. KEITH SCHOLARS HALL, THROUGH THE ISSUANCE BY THE WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS OF A PROMISSORY NOTE IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$41,000,000; AUTHORIZING THE OBTAINING OF A LOAN THROUGH THE HBCU CAPITAL FINANCING PROGRAM PURSUANT TO A LOAN AGREEMENT WITH RICE CAPITAL ACCESS PROGRAM, LLC, TO BE EVIDENCED BY SUCH PROMISSORY NOTE AND THE EXECUTION AND DELIVERY OF SUCH LOAN AGREEMENT; AUTHORIZING THE PLEDGING OF CERTAIN REVENUES AND FEES OF WEST VIRGINIA STATE UNIVERSITY AS SECURITY FOR THE LOAN; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS NECESSARY FOR THE OBTAINING OF THE LOAN AND TO EFFECT SUCH PLEDGE; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS NECESSARY FOR THE REFUNDING AND REDEMPTION OF THE SERIES 2012 BONDS AND THE SERIES 2013 A BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND OTHER NECESSARY DOCUMENTS FOR THE ACQUISITION OF SCHOLARS HALL; DELEGATING TO THE PRESIDENT AND THE VICE PRESIDENT FOR BUSINESS AND FINANCE OF WEST VIRGINIA STATE UNIVERSITY AND THE CHAIRMAN AND VICE-CHAIRMAN OF THE BOARD OF GOVERNORS CERTAIN RESPONSIBILITIES IN CONNECTION WITH SUCH LOAN AND OTHER TRANSACTIONS; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AND THE TAKING OF SUCH OTHER ACTIONS AS MAY BE NECESSARY OR APPROPRIATE FOR SUCH REFUNDING AND REDEMPTION OF THE SERIES 2012 BONDS AND THE SERIES 2013 A BONDS, THE ACQUISITION OF SCHOLARS HALL, THE OBTAINING OF THE LOAN AND CARRYING OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND APPROVING A FORM OF DEBT POLICY

WHEREAS, pursuant to the Bond Trust Indenture dated as of December 1, 2012 (as supplemented and amended, the "Bond Indenture"), between this Board and The Huntington National Bank, as bond trustee (the "Bond Trustee"), this Board issued \$8,930,000 in aggregate

principal amount of University Refunding and Improvement Revenue Bonds, Series 2012 (the “Series 2012 Bonds”), which are currently outstanding in the principal amount of \$8,515,000;

WHEREAS, pursuant to the Bond Indenture, this Board issued \$2,815,000 in aggregate principal amount of University Refunding Revenue Bonds, Series 2013 A (the “Series 2013 A Bonds”), which are currently outstanding in the principal amount of \$340,000;

WHEREAS, pursuant to the Trust Indenture dated as of September 1, 2013 (the “County Indenture”), between The County Commission of Kanawha County, West Virginia (the “County Commission”) and the Bond Trustee, the County Commission issued \$25,175,000 in aggregate principal amount of Student Housing Revenue Bonds, Series 2013 (West Virginia State University Foundation Project) (the “2013 Foundation Bonds”), which are currently outstanding in the principal amount of \$24,250,000;

WHEREAS, the proceeds of the 2013 Foundation Bonds were loaned by the County Commission to the West Virginia State University Foundation (the “Foundation”) to finance the construction of the Judge Damon J. Keith Scholars Hall (“Scholars Hall”), which is utilized as a residence hall for University students;

WHEREAS, the Series 2012 Bonds maturing on and after October 1, 2021, are subject to optional redemption on and after October 1, 2020, in whole on any date or in part on any Business Day (as such term is defined in the Bond Indenture) at the redemption price of par, together with accrued interest, if any, to the redemption date;

WHEREAS, the Series 2013 A Bonds maturing on and after October 1, 2021, are subject to optional redemption on and after October 1, 2020, in whole on any date or in part on any Business Day (as such term is defined in the Bond Indenture) at the redemption price of par, together with accrued interest, if any, to the redemption date;

WHEREAS, the 2013 Foundation Bonds maturing on and after July 1, 2024 are subject to optional redemption on and after July 1, 2023, in whole or in part on any Business Day (as such term is defined in the County Indenture) at a redemption price of par, together with accrued interest, if any, to the redemption date;

WHEREAS, this Board finds it necessary and desirable, in the best interests of the University and consistent with and in furtherance of the University’s institutional campus plan to acquire Scholars Hall from the Foundation through a Purchase and Sale Agreement by and between this Board and the Foundation (the “Purchase Agreement”), the form of which is attached hereto as Exhibit A, and for the Foundation to use the proceeds from such sale to defease the outstanding 2013 Foundation Bonds;

WHEREAS, in discussions with West Virginia State University’s financial advisor, Public Resources Advisory Group (the “Financial Advisor”), it has been determined that it is in the best interests of this Board, the University, and the State of West Virginia (the “State”) for this Board to refund and redeem all or a portion of the Series 2012 Bonds and the Series 2013 A Bonds and

to acquire Scholars Hall, all of which would result in debt service savings in an amount determined by the Authorized Officer (defined herein) to be of financial benefit to the University, with the proceeds of a loan (as defined in more detail below, the “Loan”);

WHEREAS, pursuant to the authority contained in Chapter 18B, Articles 10 and 19, and Chapter 13, Article 2G of the Code of West Virginia, 1931, as amended (together, the “Act”), this Board is authorized to issue revenue bonds, notes or other debt instruments to refund and redeem the Series 2012 Bonds and the Series 2013 A Bonds and to acquire Scholars Hall through bonding or notes or another financing method, and to pay related costs, including the costs incurred in connection with the Loan;

WHEREAS, this Board submitted a loan application through the HBCU Capital Financing Program of the United States Department of Education to provide funding to finance the costs of refunding and redeeming the Series 2012 Bonds and the Series 2013 A Bonds and acquiring Scholars Hall;

WHEREAS, the HBCU Capital Financing Program has approved the Loan to this Board to provide funding to finance the costs of refunding and redeeming the Series 2012 Bonds and the Series 2013 A Bonds and acquiring Scholars Hall;

WHEREAS, the Loan will be governed by a loan agreement (the “Loan Agreement”) between this Board and Rice Capital Access Program LLC (together with any affiliate that may be substitute therefor and any successors and assigns the “Lender”), will be evidenced by a promissory note issued by this Board (the “Note” and, together with the Loan Agreement and any other documents contemplated thereby, the “Loan Documents”) and may be secured by a pledge of certain revenues and fees of this Board and the University, as described herein;

WHEREAS, it is in the best interests of this Board, the University and the State that this Board obtain the Loan pursuant to the Loan Agreement and issue its Note, all to be within the parameters set forth in Section 3, below, with such terms to be set forth in the Loan Agreement;

WHEREAS, this Board has received or will prior to obtaining the Loan receive the approval of the West Virginia Higher Education Policy Commission (“HEPC”) pursuant to the Act;

WHEREAS, the refunding and redemption of the Series 2012 Bonds and the Series 2013 A Bonds and the acquisition of Scholars Hall through obtaining of the Loan and paying any costs related to the Loan, including the costs related to the issuance of the Note, all as described in the foregoing Preambles and in the resolutions below, are hereinafter referred to together as the “Transaction”;

WHEREAS, in accordance with HEPC’s Capital Project Management Rule, 133 C.S.R. 12, this Board finds it desirable and appropriate to approve a debt policy for this Board and the University, the form of which is attached hereto as Exhibit B;

WHEREAS, this Board deems it desirable, in keeping with its purposes and in the best interests of the University and the State to authorize the Transaction, the issuance of the Note, the execution and delivery of the Loan Agreement and other Loan Documents, the execution and delivery of the Purchase Agreement and to take and authorize the other actions set forth herein, including but not limited to the delegation of certain actions in connection with the Transaction to designated officials of the University and this Board; and

WHEREAS, it is in the best interest of this Board to grant to the President and the Vice President for Business and Finance of the University and the Chairman and Vice-Chairman of this Board, acting together or individually (each, an “Authorized Officer”), the power and authority to negotiate and enter into any agreements required for the Transaction, select all or a portion of the Series 2012 Bonds and the Series 2013 A Bonds to be refunded and redeemed, negotiate and approve the final terms of the Purchase Agreement, establish the final terms and provisions of the Loan Agreement, to pledge certain revenues and fees of this Board and the University, execute and deliver the Loan Documents and the Purchase Agreement, and take other actions and execute and deliver such other documents as may be necessary or desirable to consummate the refunding and redemption of the Series 2012 Bonds and the 2013 A Bonds, the acquisition of Scholars Hall, and the Transaction as contemplated by this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, AS FOLLOWS:

Section 1. Authorization. This Board approves the Transaction and authorizes the Authorized Officers to execute and deliver all documents and to take all actions necessary to implement the Transaction.

Section 2. Findings and Determinations. This Board specifically finds and determines as follows:

A. The findings and determinations set forth in the Preambles hereto are hereby incorporated herein as if set forth in full in this subsection.

B. This Board has full power and authority to obtain the Loan and issue the Note to (i) refund and redeem the Series 2012 Bonds and the Series 2013 A Bonds, (ii) acquire Scholars Hall and (iii) pay costs related to the Loan, including the costs related to the issuance of the Note; to enter into the Loan Agreement and the Purchase Agreement, and to enter into the other agreements relating to the Series 2012 Bonds and the Series 2013 A Bonds, the acquisition of Scholars Hall, the Loan, and the Transaction, and this Board has taken or will take by the adoption of this Resolution all actions necessary for it to authorize its proper officers to execute and deliver agreements relating to the Transaction (or to ratify the execution and delivery thereof), the Loan Documents, the Purchase Agreement, and the other agreements relating thereto.

C. This Resolution is adopted pursuant to and in accordance with the provisions of the Act.

D. The Transaction is hereby approved, ratified and confirmed or authorized and directed, as applicable, and any actions taken by an Authorized Officer or any other officer or employee of the University in connection therewith prior to the adoption of this Resolution are hereby approved, ratified and confirmed.

E. It is in the best interests of this Board and the University that an Authorized Officer have the power and authority to execute and deliver one or more certificates of this Board, as described in Section 7 hereof (whether one or more, the “Certificate of Determinations”), determining which of the Series 2012 Bonds and the Series 2013 A Bonds, whether all or a portion, shall be refunded and redeemed, whether Scholars Hall shall be acquired, setting forth the terms and provisions of the Loan, and approving the Loan Agreement and the Purchase Agreement, in each case not inconsistent with this Resolution.

Section 3. The Loan. The Loan shall be obtained in the principal amount not to exceed \$41,000,000. The Authorized Officers are hereby authorized and directed to negotiate the final terms of the Loan with and issue the Note to the Lender; provided, that the principal amount of the Loan shall not exceed \$41,000,000, the term of the Loan shall not exceed 30 years, and the interest rate on the Loan shall not exceed 5.00%. The Loan may be secured by all or part of the Auxiliary Capital Fees (defined below) and Gross Operating Revenues (defined below). The Loan and the Note shall at all times constitute a special obligation of this Board and shall at no time constitute a debt of the State within the meaning of any statutory or constitutional authority.

As used in this Resolution, the following terms have the meanings set forth below:

“Auxiliary Capital Fees” means any auxiliary capital fees imposed and collected by this Board on the University’s students pursuant to Chapter 18B, Article 10 of the Code of West Virginia, 1931, as amended, for the purpose of supporting debt service, capital projects and campus maintenance and renewal for the Auxiliary Facilities.

“Auxiliary Facilities” means, collectively, all buildings or structures of the University used for an auxiliary enterprise, including but not limited to dormitories and student, faculty and/or staff housing facilities, food service facilities, student union facilities, bookstores, transportation facilities and motor vehicle parking facilities, but excluding any athletic facilities of the University.

“Auxiliary Fees” means the auxiliary fees imposed and collected by this Board on the University’s students pursuant to Chapter 18B, Article 10 of the Code of West Virginia, 1931, as amended, for the purpose of operating and financing the Auxiliary Facilities, which may include (i) parking fees received from any source; (ii) bookstore revenues; (iii) student union vendor and user fees; (iv) donations or grants from any external source; (v) facility rental fees; and (vi) fees assessed to students to support Auxiliary Facilities, but do not include any fees or charges related to intercollegiate athletics. The Auxiliary Fees may be pledged to repayment of the Loan to the extent they constitute Gross Operating Revenues.

“Gross Operating Revenues” means all rents, fees, charges and other revenues and income received by or accrued to the University from the operation and use of Dawson Hall, Judge Damon

J. Keith Scholars Hall (“Scholars Hall”), Sullivan Hall and the James C. Wilson College Union (“Student Union”) (collectively, the “Designated Auxiliary Facilities”), including specifically charges for room and board at Dawson Hall, charges for room and board at Scholars Hall, charges for room and board at Sullivan Hall, charges for food service at the Student Union, revenues derived from the operation of the University Bookstore, fees for providing space for meetings, conferences and conventions at the Student Union, revenues from the operation of vending machines, snack bars and catering services at or from the Designated Auxiliary Facilities, and any and all other revenues derived from the Designated Auxiliary Facilities as calculated in accordance with GAAP, but excluding the Auxiliary Capital Fees related thereto and as otherwise required by statute. Auxiliary Fees derived from or specifically related to the Designated Auxiliary Facilities shall constitute Gross Operating Revenues. Gross Operating Revenues does not include any rents, fees, charges or other revenues and income received by or accrued to the University in connection with intercollegiate athletics.

Section 4. Loan Documents. Each Authorized Officer, with the assistance of counsel, is authorized to negotiate and approve the form and content of the Loan Agreement and other Loan Documents under such terms and conditions as are in the best interests of this Board and the University and are within the parameters described in Section 3, above. Each Authorized Officer is hereby authorized, empowered and directed to execute and deliver the Loan Documents for and on behalf of this Board, in the form and upon those terms and conditions as approved by such Authorized Officer, with the assistance of counsel, and such approval shall be conclusively evidenced by the execution of the Loan Documents by the Authorized Officer.

Section 5. Special Obligation. The Loan and the Note are special obligations of this Board, payable from and solely secured by the Auxiliary Capital Fees and Gross Operating Revenues pledged thereto. The Loan shall not constitute a debt of the State, and the credit or taxing power of the State shall not be pledged therefor, but the Loan shall be payable only as described above and provided in the Loan Documents. No recourse shall be had for the payment of the principal of or interest on the Loan or for any claim based thereon, on this Resolution or on any of the documents executed in connection therewith against any official, member, officer or employee of this Board, HEPC or the State, and no members of this Board or HEPC or the Governor of the State shall be liable personally on the Loan.

Section 6. Acquisition of Scholars Hall. The acquisition of Scholars Hall from the Foundation pursuant to the Purchase Agreement and any necessary related documents is hereby approved. The form of the Purchase Agreement attached hereto as Exhibit A is hereby approved, subject to such changes, insertions and omissions as may be approved by the Authorized Officer. Scholars Hall shall be purchased for the price and upon the terms set forth in the Certificate of Determinations. The execution and delivery of the Purchase Agreement and any necessary related documents is hereby authorized. Following the execution of the Certificate of Determinations, each Authorized Officer is hereby authorized and directed to execute the Purchase Agreement, with such changes, insertions and omissions as may be approved by the Authorized Officer and any necessary related documents, his execution thereof to be conclusive evidence of such approval.

Section 7. Certificate of Determinations. The Certificate of Determinations shall set forth whether all or a portion of the Series 2012 Bonds and the Series 2013 A Bonds shall be refunded and redeemed and whether Scholars Hall shall be acquired by the Loan. The Certificate of Determinations shall also set forth the principal amount, the maturity, the interest rate, the redemption and/or prepayment provisions, and other terms and details of the Loan, all subject to the parameters set forth herein, including but not limited to Section 3. Assuming such parameters are met, the Certificate of Determinations shall have full force and effect as if adopted as a part of this Resolution.

Section 8. Debt Policy. The form of the Debt Policy attached hereto as Exhibit B is hereby approved.

Section 9. Personal Liability. None of the present or future employees, officers or members of this Board or the University or any person executing agreements relating to the Transaction, the Loan Documents, the Purchase Agreement or any documents relating thereto shall be personally liable for the cost of the Transaction, the Loan Documents, the Purchase Agreement or any other obligation relating to the Transaction, the Loan Documents, the Purchase Agreement or be subject to any personal liability by reason of the Transaction or the execution and delivery of the Loan Documents, the Purchase Agreement or any documents relating thereto.

Section 10. Formal Actions. This Board hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board that resulted in formal action were in meetings open to the public, in full compliance with all applicable legal requirements.

Section 11. Incidental Actions. Each of the Authorized Officers is hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates, and to take such other actions as may be necessary or appropriate for the refunding and redemption of the Series 2012 Bonds and the Series 2013 A Bonds, the acquisition of Scholars Hall, the obtaining of the Loan, the execution and delivery of the Loan Documents and the Purchase Agreement, and carrying out the Transaction and any other transactions contemplated therein and herein, all in accordance with the applicable provisions of the Code of West Virginia of 1931, as amended. The execution, delivery and due performance of agreements relating to the Transaction, the Loan, the acquisition of Scholars Hall and all documents and instruments required in connection therewith are hereby in all respects approved, authorized, ratified and confirmed, including any and all acts heretofore taken in connection with the Transaction.

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Section 12. Effective Date. This Resolution shall take effect immediately upon its adoption, and all prior resolutions or parts thereof inconsistent herewith are hereby repealed.

Adopted this 26th day of March 2021.

WEST VIRGINIA STATE UNIVERSITY
BOARD OF GOVERNORS

Chairman

Secretary

Exhibit A

Form of Purchase Agreement
(Attached)

FORM OF PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made this ____ day of _____, 2021, by and between WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS on behalf of WEST VIRGINIA STATE UNIVERSITY, an agency and higher education institution of the State of West Virginia (the “UNIVERSITY” and/or “PURCHASER”), and the WEST VIRGINIA STATE UNIVERSITY FOUNDATION, INC., a West Virginia non-profit corporation (the “FOUNDATION” and/or “SELLER”).

WHEREAS, pursuant to the Trust Indenture dated as of September 1, 2013 (the “County Indenture”), between The County Commission of Kanawha County, West Virginia (the “County Commission”) and the Bond Trustee (defined below), the County Commission issued \$25,175,000 in aggregate principal amount of Student Housing Revenue Bonds, Series 2013 (West Virginia State University Foundation Project) (the “2013 Foundation Bonds”), which are currently outstanding in the principal amount of \$24,250,000;

WHEREAS, the proceeds of the 2013 Foundation Bonds were loaned by the County Commission to the West Virginia State University Foundation (the “Foundation”) to finance the construction of the Judge Damon J. Keith Scholars Hall (“Facility”), which is utilized as a residence hall for University students;

WHEREAS, the University leases to the Foundation the site on which the Facility is now located, which site is more fully described on Exhibit A attached hereto (the “Site”), pursuant to a Ground Lease dated as of September 1, 2013 (as supplemented or amended from time to time, the “Ground Lease”);

WHEREAS, the University desires to purchase, and the Foundation desires to sell, the Facility, with the proceeds of such transaction being utilized for the defeasance of the 2013 Foundation Bonds and payment of all administrative costs resulting from the defeasance and payment of all costs incurred by the Foundation as a result of this transaction;

WHEREAS, the University intends to borrow funds from Rice Capital Access Program LLC (the “Lender”), in connection with the HBCU Capital Financing Program of the United States Department of Education, to purchase the Facility, which such funds shall be transferred directly from the Lender to The Huntington National Bank, as the Bond Trustee (the “Bond Trustee”) in connection with the 2013 Foundation Bonds to carry out the defeasance of the 2013 Series Bonds, in accordance with the requirements of the County Indenture;

WHEREAS, the defeasance of the 2013 Foundation Bonds is necessary to allow the transfer of the Facility from the Foundation to the University, as the Facility is subject to a Credit Line Leasehold Deed of Trust, Assignment of Rents and Leases, Fixture Filing and Security Agreement, dated as of September 1, 2013 by and between the Foundation and the trustee named therein (the “Deed of Trust”), to secure repayment of the 2013 Foundation Bonds, which shall be released upon defeasance of such Bonds;

WHEREAS, the Foundation and the University are now prepared to undertake the actions necessary to have the Facility titled to the University, in connection with its loan from the Lender and the defeasance of the 2013 Foundation Bonds;

WITNESSETH: That, for and in consideration of the mutual covenants and conditions set forth and contained in this Agreement, PURCHASER hereby offers and agrees to purchase and SELLER hereby agrees to sell the Facility hereinafter described, including the personal property located therein, for the consideration recited and subject to the following terms and conditions:

1. **DESCRIPTION OF FACILITY:** The real estate on which the Facility is located (the “Site”) is set forth on Exhibit A. The Facility is the Judge Damon J. Keith Scholars Hall student housing facility with the improvements so constructed, together with any fixtures installed and equipment and furnishing located on the Site.

2. **PURCHASE PRICE:**
 - a) PURCHASER agrees to pay to SELLER for the Facility the total sum of _____ Dollars (\$_____.00) (the “Purchase Price”).

 - b) At Closing, as defined below, PURCHASER will cause to be paid, by wire transfer, the Purchase Price to SELLER’S Bond Trustee for the 2013 Foundation Bonds, The Huntington National Bank.

3. **CLOSING:**
 - a) Unless otherwise mutually agreed upon in writing, the sale shall be completed and the purchase money paid and all necessary legal documents or instruments, including those set forth below at Item c), have been executed and delivered on or before _____, 2021, or any other date agreed upon by the parties (the “Closing Date”).

 - b) The closing contemplated by this Agreement (the “Closing”) shall occur in Charleston, West Virginia, at a location determined by PURCHASER, unless otherwise agreed upon by PURCHASER and SELLER.

 - c) SELLER shall provide to PURCHASER fully executed originals of the following:
 - i. Termination of Ground Lease;

 - ii. Release of Deed of Trust;

 - iii. Termination of UCC (Financing Statement No. 201338732967);

 - iv. Special Warranty Deed for the Facility, and

v. Assignment and Bill of Sale.

- d) PURCHASER shall pay for preparation of the Termination of Ground Lease, Release of Deed of Trust, and Termination of UCC (collectively herein referred to as the “Releases”); Special Warranty Deed for the Facility, and Assignment and Bill of Sale; the cost of clearing any additional liens or encumbrances affecting the Facility; and recordation of any releases executed by creditors of SELLER, all other recording fees, financing fees, title insurance premiums, flood certifications, appraisal fees, and all other expenses incurred by PURCHASER and SELLER in preparation for Closing.
- e) Upon the fulfillment of all conditions stipulated herein to be performed by the PURCHASER and SELLER, PURCHASER and SELLER shall file or cause to be filed by the Bond Trustee, the Releases, the Special Warranty Deed for the Facility, and the Assignment and Bill of Sale.

4. **CONTINGENCIES:** This Agreement is contingent upon the following terms:

- a) As determined by the PURCHASER, this Agreement and the Releases may be subject to approval as to form by the West Virginia Attorney General.
- b) Pursuant to W.Va. Code §18B-19-13(a) through (c), PURCHASER shall provide this Agreement and a report setting forth a detailed summary of the terms and conditions, including the name of the property owner(s) and the agent(s) involved in the sale to the Joint Committee on Government and Finance for prior review at least thirty (30) days before the Closing.
- c) As determined by PURCHASER, the purchase contemplated by this Agreement may be subject to formal approval by other governmental authorities.
- d) PURCHASER, upon execution of this Agreement, shall immediately and diligently pursue obtaining all requisite internal and governmental approvals for Closing, including approval of the West Virginia Higher Education Policy Commission to the acquisition of the Facility, and shall provide notice to the SELLER when all such approvals have been received.

5. **CONDITIONS PRECEDENT TO PERFORMANCE:**

- a) SELLER shall not be obligated to perform under this Agreement unless each of the following conditions shall have been fulfilled at Closing:
 - i. PURCHASER shall provide to SELLER drafts of the proposed Releases, the Special Warranty Deed for the Facility, and the Assignment and Bill of Sale.
 - ii. Receipt from PURCHASER of funds equal to the Purchase Price in accordance with Section 2 above.

b) PURCHASER shall not be obligated to perform under this Agreement unless each of the following conditions shall have been fulfilled at Closing:

i. SELLER shall deliver executed copies of the Releases, the Special Warranty Deed for the Facility, and the Assignment and Bill of Sale.

6. **POSSESSION**: Possession of the Facility shall be delivered to the PURCHASER on the Closing Date.

7. **RISK OF LOSS**: The risk of loss or damage to the Facility by fire or other casualty shall remain with SELLER until the consummation of this transaction.

8. **NOTICES**: Any notice required or permitted to be given by any provision of this Agreement shall be in writing, executed by the party giving such notice, and delivered by certified mail, return receipt requested, postage prepaid, addressed as follows:

SELLER: **WEST VIRGINIA STATE UNIVERSITY FOUNDATION, INC.**
100 Barron Drive, East Hall
P.O. Box 1000
Institute, West Virginia 25112-1000
Attention: Chairman

PURCHASER: **WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS**
114 Ferrell Hall
West Virginia State University
Institute, West Virginia 25112
Attention: Chairman

9. **GOVERNING LAW**: This contract shall be governed by and construed in accordance with the laws of the State of West Virginia.

10. **NON-ASSIGNABILITY**: This Agreement and the rights and obligations of the PURCHASER and SELLER may not be assigned or delegated by either without the prior written consent of the other party, and any purported assignment without such consent shall be void.

11. **ENTIRE AGREEMENT**: This Agreement constitutes and contains all stipulations and agreements between PURCHASER and SELLER, superseding any prior written or oral agreements between them respecting the subject matter of this Agreement, and unless in subsequent writing which has been signed and dated by the parties, no representations by either of the parties other than contained in this Agreement shall be binding upon either party.

12. **MODIFICATIONS**: Any provision to modify, alter, enlarge, or change this Agreement shall be in writing, signed and dated by both parties. Any such modification must be delivered in person or by certified mail to the other party.

13. **BINDING AGREEMENT:** This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon each of their respective heirs, executors, administrators, successors, and assigns.

14. **SURVIVAL:** Each and every representation, warranty and covenant of PURCHASER and SELLER set forth in this Agreement, to the extent the same has not been nor cannot be fully satisfied or performed at or before the date of Closing, shall survive Closing and continue in full force and effect, and bind PURCHASER and SELLER, as applicable.

15. **RULE OF CONSTRUCTION:** The PURCHASER and SELLER hereto acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

16. **HEADINGS:** The captions or headings used in this Agreement are for convenience of reference only and shall not be considered in interpreting this Agreement.

17. **REPRESENTATIONS AND WARRANTIES:**

a) SELLER hereby represents and warrants as follows, which representations and warranties shall be true and correct as of the date hereof and as of the date of Closing and the truth and correctness of which shall be a conditions precedent to PURCHASER's obligations to close the transaction contemplated by this Agreement:

- i. The Foundation is a nonstock, nonprofit corporation duly organized and existing under the laws of the State of West Virginia, has full legal right, power, and authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby.
- ii. This Agreement has been duly authorized, executed and delivered by the Foundation.
- iii. All matters materially and adversely impacting all or any part of the Facility, or the development or operation of all or any part of the Facility, or with the potential to do any of the foregoing, which are known to SELLER have been disclosed to PURCHASER in writing.

b) PURCHASER hereby represents and warrants as follows, which representations and warranties shall be true and correct as of the date hereof and as of the date of Closing and the truth and correctness of which shall be a conditions precedent to SELLER's obligations to close the transaction contemplated by this Agreement:

- i. The University is an agency and higher education institution of the State of West Virginia, has full legal right, power, and authority to enter into this

Agreement and to carry out and consummate all transactions contemplated hereby.

- ii. This Agreement has been duly authorized, executed and delivered by the University.
- iii. There are no existing or pending actions, suits, or proceedings with respect to or affecting any aspect of the purchase of the Facility nor have any such actions, suits or proceedings been threatened or asserted.

[The remainder of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

PURCHASER:

WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS, on behalf of WEST VIRGINIA STATE UNIVERSITY

By: _____

Its: _____

SELLER:

WEST VIRGINIA STATE UNIVERSITY FOUNDATION, INC.

By: _____

Its: _____

EXHIBIT A

DESCRIPTION OF SITE

Commencing at an iron pipe, said iron pipe being the South West corner of Tax parcel 27, Tax Map 34D of Union District, Kanawha; Thence S 29° 01' 57" E for a distance of 481.65 feet to the POINT OF BEGINNING, said point of beginning being the South West corner of the Permanent Ground lease described herein;

Thence, N 31° 17' 34" E for a distance of 195.82 feet to a point on a line;

Thence, N 59° 07' 40" W for a distance of 37.50 feet to a point on a line of an access easement; Thence with the access easement N 30° 47' 13" E for a distance of 25.00 feet to a point;

Thence leaving said access easement N 30° 47' 13" E for a distance of 22.10 feet to a point on a line;

Thence N 68° 58' 54" E for a distance of 8.47 feet to a point;

Thence S 58° 57' 26" E for a distance of 31.47 feet to a point;

Thence N 31° 00' 00" E for a distance of 182.07 feet to a point;

Thence S 59° 00' 00" E for a distance of 18.00 feet to a point;

Thence S 31° 00' 00" W for a distance of 16.42 feet to a point;

Thence S 59° 00' 00" E for a distance of 79.45 feet to a point;

Thence S 31° 17' 34" W a distance of 415.63 feet to a point;

Thence N 58° 42' 26" W for a distance of 95.34 feet to the POINT OF BEGINNING;

Containing 42188 square feet (0.968 acre)

Exhibit B

Debt Policy
(Attached)

West Virginia State University Board of Governors

West Virginia State University

BOG Policy # 65

Title: Debt Policy

Section 1. Purpose and Scope.

- 1.1. Scope: University seeks to establish a policy regarding the use of debt and form guidelines for the issuance, approval and monitoring debt and debt like obligations.
- 1.2. Objectives of this policy are to establish a framework for approving and managing debt to maintain access to capital markets, maximize WVSU's credit rating and strategically use debt obligations to enhance the University's financial profile (through refunding) as well as to fund capital projects and strategic initiatives.
- 1.3. Authority: West Virginia Code Chapter 18B Articles 10 and 19, as amended and when applicable Chapter 13, Article 2G, as amended.
- 1.4. Effective Date: [_____].

Section 2. Delegation, Authority and Periodic Review.

- 2.1. The West Virginia State University Board of Governors (Governing Board) has sole authority to approve the issuance and structure of all West Virginia State University (WVSU) debt. Subsequent to its approval, the Governing Board delegates the authority to execute the issuance of debt exclusively to the President. Such delegated authority may also be revoked by the Governing Board at any time.
- 2.2. The President may also delegate authority to others to act as the President's designee to execute the issuance of debt. All such authorizations and approvals shall be made in accordance with the provisions of this rule.
- 2.3. The President or designee may also develop administrative policies and procedures, consistent with this rule, to provide additional guidance to employees and others as it relates to the issuance and ongoing monitoring of debt.
- 2.4. This policy relates to all forms of debt financing including long-term, short-term, fixed-rate, variable-rate debt and any instruments that have the effect of committing WVSU to future payments and therefore, impact its operating budget and credit. In addition to the above mentioned, debt also includes operating and capital leases, on and off-balance sheet financing, as well as any legal derivative instruments.

- 2.5. The President or individuals receiving delegated authority in section 2.2 shall provide the Governing Board annual reports and updates regarding this policy, all financing activities and the University's debt structure. Also, the President or those receiving delegated authority shall be subject to periodic internal, as well as external audits; and shall comply with all applicable federal and state laws.
- 2.6. This Debt Policy is subject to period review and change to meet the evolving needs of the University over time.

Section 3. Considerations related to Debt Issuance.

- 3.1. This policy establishes a control framework to ensure that appropriate considerations are applied for capital planning, reporting requirements, debt structuring and debt authorization. It establishes guidelines to ensure that existing and proposed debt issues are consistent with financial resources of the University.
- 3.2. The University may use debt to accomplish critical priorities by prudently using debt financing to accelerate certain projects, where appropriate, and to enhance the university's debt portfolio through the execution of refunding or restructuring strategies to optimize or reduce ongoing debt obligations. As part of its review of any new project, the University will evaluate all funding sources to determine the optimal funding structure to achieve the lowest cost of capital.
- 3.3. Under this policy, the following debt related goals will be considered:
 - a. Execution strategy on a public or private basis.
 - b. Implementing the appropriate debt mix (i.e. short-term, long-term, and fixed-rate) based on market conditions and related risks;
 - c. Managing the structure and maturity profile of debt to meet budget objectives;
- 3.4. Risk shall be considered in the context of the University's full operating profile rather than on the basis of a single transaction or a series of transactions.
 - a. Variable rate debt and derivatives shall only be considered if a full analysis of the benefit, costs and risks have been completed.
 - b. Management shall present to the Board the findings of this analysis before entering into any variable rate debt or derivatives contracts.
 - c. If derivatives are used, the University will utilize a registered swap advisor.
 - d. The desire for the lowest cost of capital shall be balanced with exposure to market risks. Risk may be managed through products legally available for purchase by the University.
- 3.5. Affordability of Debt must be considered when the University enters into any new debt or debt-like obligations. Debt affordability considers future debt service obligations and any incremental costs associated with new projects versus the associated resources available.
 - a. University shall evaluate debt affordability by calculating debt ratios that compare annual debt service as a percentage of current and anticipated total operating

expenses and a second that compares to projected revenues available to service the applicable debt.

- 3.6. Decisions to issue Debt shall consider the impact of such issuance on current and future debt issuance and the overall financial health of the University.
- 3.7. Debt issuance shall be coordinated to the extent possible to reduce the overall cost of borrowing.
- 3.8. The University understands the importance of compliance regarding federal and institutional requirements for the issuance and management of tax-exempt debt proceeds.
 - a. The University understands that it is subject to such requirements for any tax-exempt bond proceeds that it receives regardless of whether the University is the issuer of that tax-exempt debt.

February 25, 2021

Dr. Nicole Pride
President
West Virginia State University
Campus Box 399
Post Office Box 1000
Institute, West Virginia 25112

Dear President Pride,

I have received Policy No. 65, *Debt Policy* of the West Virginia State University Board of Governors that was promulgated as an emergency policy and hereby concur in its designation as an emergency policy.

Sincerely,



Sarah Armstrong Tucker, Ph.D.
Chancellor

cc: Mr. Charles E. Jones, Jr., Chair
Dr. Bryle Hatch, Chief of Staff, WVSU