

**SPECIAL MEETING OF THE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

March 29, 2021 | 1:00 p.m. | By Zoom Conference

1-646-558-8656 and enter meeting ID 949 2001 3683

AGENDA

- I. Call to Order**
- II. Approval of Debt Refunding and Redemption**
- III. Additional Board Action and Comment**
- IV. Adjournment**

**West Virginia Higher Education Policy Commission
Meeting of March 29, 2021**

ITEM: Approval of Debt Refunding and Redemption

INSTITUTION: West Virginia State University

RECOMMENDED RESOLUTION: Resolved, that the West Virginia Higher Education Policy Commission approves the West Virginia State University debt refunding and redemption transaction as described in the approving resolution.

STAFF MEMBER: Ed Magee

BACKGROUND:

The Commission is being asked to approve the refunding and redemption of all or a portion of West Virginia State University's Series 2012 Bonds and Series 2013 A Bonds, and the acquisition of Judge Damon J. Keith Scholars Hall from the West Virginia State University Foundation, Inc., which will use the proceeds therefrom to defease the outstanding West Virginia Student Housing Revenue Bonds, (The West Virginia State University Foundation Project), Series 2013 in an aggregate principal amount not to exceed \$41 million. New debt will be issued through the HBCU Capital Financing Program of the United States Department of Education and will be governed by a loan agreement between the West Virginia State University Board of Governors and Rice Capital Access Program LLC. The current outstanding balances on the debt to be refunded and redeemed are:

West Virginia State University:

University Refunding and Improvement Revenue Bonds, Series 2012	\$ 8,515,000
University Refunding Revenue Bonds, Series 2013 A	\$ 340,000

County Commission of Kanawha County:

Student Housing Revenue Bonds, Series 2013 (West Virginia State University Foundation Project)	\$24,250,000
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The proceeds of the 2013 Foundation Bonds were loaned by the County Commission to the West Virginia State University Foundation to finance the construction of the Judge Damon J. Keith Scholars Hall, which is utilized as a residence hall for University students through a lease arrangement between the University and the Foundation.

The West Virginia State University Board of Governors will acquire the Judge Damon J. Keith Scholars Hall from the Foundation through a Purchase and Sale Agreement by and between the Board of Governors and the Foundation.

Security for the Loan will be evidenced through a note which is payable from and solely secured by auxiliary capital fees and gross operating revenues of designated auxiliary facilities of the university which include all of the University's dormitories (Scholars Hall, Sullivan Hall, and Dawson Hall) as well as the Student Union.

West Virginia State University will be required by the debt's covenants to annually fix, revise, charge and pledge revenues net of operating expenses in amounts sufficient to produce net income available for debt service equal to 120% of the maximum annual debt service. In addition, if the University does not meet this debt service coverage requirement, it will need to fund a liquidity reserve account annually in the amount of \$200,000 until the University demonstrates compliance with the coverage requirements or the amounts on deposit equal \$1 million.

Although the transaction is anticipated to be substantially as presented to the Commission as of this date, market conditions and other factors may affect the amount and terms of the financing.

Preliminary estimates indicate that the refunding will enable the University to save approximately \$8-10 million in net present value through the term of the loan.

**STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION**

RESOLUTION APPROVING AND CONFIRMING, AS APPLICABLE, (I) 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, (II) THE ACQUISITION OF THE JUDGE DAMON J. KEITH SCHOLARS HALL, (III) AND THE FINANCING OF THE FOREGOING THROUGH A LOAN THROUGH THE HBCU CAPITAL FINANCING PROGRAM PURSUANT TO A LOAN AGREEMENT BETWEEN WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS AND RICE CAPITAL ACCESS PROGRAM, LLC, TO BE EVIDENCED BY A PROMISSORY NOTE IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$41,000,000, WHICH LOAN SHALL BE SECURED BY CERTAIN REVENUES AND FEES OF WEST VIRGINIA STATE UNIVERSITY

WHEREAS, the West Virginia State University Board of Governors (the "Board of Governors") currently has outstanding its (i) University Refunding and Improvement Revenue Bonds, Series 2012, issued in the aggregate principal amount of \$8,930,000, and currently outstanding in the principal amount of \$8,815,000 (the "Series 2012 Bonds"); and (ii) University Refunding Revenue Bonds, Series 2013 A, issued in aggregate principal amount of \$2,815,000, and currently outstanding in the principal amount of \$340,000 (the "Series 2013 A Bonds");

WHEREAS, the County Commission of Kanawha County (the "County Commission") issued its Student Housing Revenue Bonds, Series 2013 (West Virginia State University Foundation Project), in aggregate principal amount of \$25,175,000, which are currently outstanding in the principal amount of \$24,250,000 (the "2013 Foundation Bonds");

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 West Virginia State University (the "University") students through a leading arrangement between the University and the Foundation;

WHEREAS, the Board of Governors 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 the Board of Governors 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, refunding and redeeming all or a portion of the Series 2012 Bonds and the

Series 2013 A Bonds and acquiring Scholars Hall, is expected to result in debt service savings and 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”), the Board of Governors 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, the Board of Governors 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 the Board of Governors 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 the Board of Governors 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 the Board of Governors (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 the Board of Governors and the University, as described herein;

WHEREAS, it is in the best interests of the Board of Governors, the University and the State that the Board of Governors obtain the Loan pursuant to the Loan Agreement and issue its Note;

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

WHEREAS, the Board of Governors approved the Transaction and related matters by resolution adopted March 26, 2021 (the “Authorizing Resolution”), a copy of which is attached as Exhibit B hereto;

WHEREAS, the Act requires that the Transaction be approved and confirmed, as applicable, by this Commission; and

WHEREAS, having made the considerations required by the Act, this Commission deems it desirable and in the best interests of the University to approve, confirm and authorize the Transaction.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLCY COMMISSION, AS FOLLOWS:

Section 1. Approval and Confirmation of the Transaction. The Transaction is hereby approved and confirmed, including the obtaining of the Loan in an aggregate principal amount not to exceed \$41,000,000, the refunding and redemption of all or a portion of the Series 2012 Bonds and the Series 2013 A Bonds, and the acquisition of Scholars Hall. The Loan is authorized to be obtained for the purposes of financing (i) the refunding and redemption of all or a portion of the Series 2012 Bonds and the Series 2013 A Bonds, (ii) the acquisition of Scholars Hall and (iii) the costs of issuance of the Note and related costs. The Loan may be secured by all or a portion of the revenues and fees described in the Authorizing Resolution, including the Auxiliary Capital Fees and Gross Operating Revenues (as such terms are defined in the Authorizing Resolution) of Dawson Hall, the Judge Damon J. Keith Scholars Hall, Sullivan Hall and the James C. Wilson College Union (collectively, the “Pledged Revenues”). The repayment of the Loan from the Pledged Revenues and any other legally available funds for such purpose is hereby approved. Although the Transaction is anticipated to be substantially as presented to this Commission today, the Commission recognizes that market conditions and other factors may affect the amount and terms of such financing.

Section 2. Special Obligation. The Loan and the Note are special obligations of the Board of Governors, 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 Commission or the State, and no members of this Commission shall be liable personally on the Loan.

Section 3. Incidental Action. The Chancellor, the Chairperson, Vice-Chairperson, Secretary and other appropriate members and officers of this Commission are hereby authorized and directed to execute and deliver any documents, agreements, instruments and certificates, and to take such other actions as may be required or desirable by the Board of Governors of the University to carry put the purposes of this Resolution.

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Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 29th day of March 2021.

WEST VIRGINIA HIGHER EDUCATION
POLICY COMMISSION

Chairman

Secretary

Exhibit A

Form of Purchase Agreement
(Attached)

FORM OF PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALES 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.

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- 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

Authorizing Resolution
(Attached)

**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)

Exhibit B

Debt Policy
(Attached)

West Virginia Higher Education Policy Commission
West Virginia Council for Community and Technical College Education

FINANCIAL FEASIBILITY STUDY

This Financial Feasibility Study is being submitted for the following project *(must be submitted 60 days in advance of the deadline for submitting agenda items to the Commission or Council)*:

Submission Date 3/23/2021

Name of Institution West Virginia State University

Project Name HBCU Capital Financing Program – Refunding of University and Related Foundation Bonds

Project Amount \$ 41,000,000 (Not to exceed)

Project Type *(check one)*:

- | | |
|-------------------------------------|--|
| ☐ | Education & General (E&G) Project |
| ☒ | Auxiliary Enterprise Project |
| ☒ | Property Acquisition |
| ☐ | Public/Private Development or Design/Build |
| ☐ | Other(specify): |

Proposed Financing Arrangement *(check one)*:

- | | |
|-------------------------------------|---|
| ☐ | No Debt - Paid from Institution Cash On-Hand or from Reserves |
| ☐ | Revenue Bond by Institution |
| ☐ | Capital Lease |
| ☐ | Alternative Financing Method |
| ☒ | Other(specify): Loan through U.S. Department of Education (Historically Black College & University Capital Financing Program) |

Requested Type of Financing *(should not exceed 30 years)*:

☐	Educational & General (E&G) Capital Fee Financing	Amount:	\$	
☒	Auxiliary & Auxiliary Capital Fees Financing	Amount:	\$	<u>Combined</u>
☒	Debt secured by revenue stream – identify source and provide Code citation that authorizes the pledge of this revenue stream for issuance of revenue bonds or to incur debt.	Amount:	\$	<u>Combined</u>
Total:				\$ <u>41,000,000</u>

Prepared by:

Name:	<u>Christina Dalton, MBA '08</u>
Title:	<u>Vice President of Business & Finance</u>
E-mail:	<u>christina.dalton@wvstateu.edu</u>
Telephone No.:	<u>(304) 766-3026</u>
Fax No.:	<u>(304) 766-4251</u>

The attached Financial Feasibility Study has been prepared using information and projections believed to be reliable and accurate for the purpose of estimating the demand and affordability of the proposed capital project.

Signature (Chief Financial/Fiscal Officer)

Forward original to:

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700
Charleston, WV 25301

Section 1 - General Information – To be completed for all projects.

1. Describe the project in sufficient detail so that an uninformed reader has a clear understanding of the project. Indicate whether the project is new construction, renovation/addition to an existing facility or is property acquisition.

The University is executing this financing to refinance various series of its outstanding debt for cash flow savings. As a part of the refinancing, the University is also refunding the Foundation's 2013 Bonds that were issued to construct the Judge Damon Keith Scholars Hall dormitory through a public-private partnership structure whereby the University has a contingent lease obligation to keep that dormitory occupied. In order to effectuate the refunding, the University is purchasing the Judge Damon Keith Scholars Hall dorm from the Foundation with the purchase price being the cost to redeem the Foundation's outstanding bonds. The purchase price will be funded through the loan with the U.S. Department of Education.

2. Describe how the project is essential to fulfilling the institution's mission. Address the alternatives available if the project is not undertaken.

Given the historically low interest rate environment and the original cost of the University's debt, the refunding will enable the University to save approximately \$8-10 million in net present value in annual debt service through the term of the loan (amounts are preliminary and subject to change. At this time, there are no alternatives available with similar funding terms and rates.

3. Is the project identified in the institution's capital appropriation request for this fiscal year? If yes, what is its priority in relation to the other projects? If no, why was it not included and why is being proposed now?

No, not applicable.

4. Is the project included in the institution's approved Ten Year Campus Masterplan? If so, what is the priority in relation to other projects in Masterplan and what is the estimated project cost identified in the Masterplan? If it is not included in the Masterplan, why is it being proposed ahead of the projects in approved in the Masterplan?

No, not applicable.

5. Describe the effect the project will have on those students or users who will financially support the project.

Debt service of the institution will be reduced.

6. Explain how the project will affect the institution's need for student financial aid.

Not applicable.

7. Describe the probable effects of the project on the community and environment, including changes to the value of property as a result of the project.

Not applicable.

8. Explain how the project and its impact have been conveyed to local officials and their reaction/response.

Not applicable.

9. Describe any other positive or negative effects the project may have.

The refunding will create a level annual payment that is currently lower than the projected debt service on the University and Foundation's outstanding bonds thereby Improving the University's financial position.

10. Briefly describe the financing proposal. Indicate if this proposal is for a revenue bond financing, a capital lease or lease purchase, or some other less traditional financing arrangement. Indicate anticipated closing date.

The financing will be executed as a loan under the U.S. Department of Education Historically Black College & University Program. The University has been negotiating directly with the U.S. Department of Education (through its financial agent – Rice Financial) . Terms of the Loan are still being finalized. Closing is projected to occur in late April/early May 2021.

11. Are specific revenues planned to support debt service or lease payments? (If so, please complete Section 3.)

☒ Yes ☐ No

12. What impact does the construction of this project have on the institution's compliance with federal Title IX requirements?

Not applicable.

Private Use

13. Will any person or entity other than the institution provide (directly or indirectly) any part of debt service on the portion of the bonds issued for the project? For example, will a private business entity, private foundation or federal agency be required (or expected) to make an annual contribution toward the payment of debt service.

☐ Yes ☒ No. If yes, please identify the person or entity and the percent of debt service to be provided.

14. Do you anticipate that any person or entity other than the institution will have a contractual right, different from the rights available to the general public or students, to use any part of the project or to use or buy goods or services produced at the project? For instance, have you contracted parking spaces in a parking deck to a nearby corporate office?

☐ Yes ☒ No. If yes, briefly summarize the planned contractual agreement.

15. Do you contemplate any part of the project being managed or operated by any person or entity other than the institution under a management or service contract, incentive payment or other "privatized" arrangement? Examples include contracts for food service, parking service, dormitory management, bookstore management, etc.

☐ Yes ☒ No. If yes, summarize the anticipated contractual arrangement (i.e., contract term, renewal options, compensation arrangements, etc.).

Note: These arrangements may impact whether the project is eligible for tax-exempt financing. Once tax-exempt bonds have been issued, entering into this type of contract or arrangement may affect the bond's tax-exempt status and as a result, could have an adverse affect on the bondholders. **So long as the bonds are outstanding,** the terms of any such arrangement must be reviewed and approved by the Bond Counsel and the Policy Commission staff prior to the execution of any contract.

Property Acquisition by Purchase, Lease or Lease Purchase

Property acquired by purchase, lease or lease/purchase exceeding \$1 million (\$15 million for Marshall University and West Virginia University) must be approved in advance by the Commission or Council as applicable.

16. What is the purchase price of the property? What is the appraised value of the real property and improvements? The institution must engage a licensed appraiser experienced and certified for the property being appraised. Attach a copy of the appraisal.

The purchase price of Scholars Hall will equal the defeasance cost of the associated debt (approximately \$25.75 million). The University has not requested an appraisal.

17. Does the institution have a Phase 1 Environmental Study for the property? If so, please provide a copy. Does the Phase 1 Study identify the need for a Phase 2 Environmental Study? If so, please provide a copy to the Phase 2 Study.

☐ Yes ☒ No. If yes, please provide a copy. If no, this study must be performed by a firm experienced and qualified to perform this study prior to purchase. Include contact person with WV DEP.

Existing property already in use by the University.

18. Has a title search been performed? If so, are there any issues preventing the institution obtaining a general warranty deed? Are there any easements, encroachments, or encumbrances affecting the property? A title search must be performed prior to purchase.

☒ Yes ☐ No. If yes, please provide a copy. If no, a title search must be performed prior to purchase.

19. Is the property within the property acquisition boundaries of the approved Ten Year Campus Masterplan?

☒ Yes ☐ No. If no, the acquisition must be approved in advance by the Commission or Council as applicable no matter the dollar value.

20. Has there been an architectural/engineering firm retained for any portion of the project (feasibility study, site selection, schematic drawings)?

☐ Yes ☒ No.

21. If so, was the firm selected and retained following West Virginia Code §18B-19-7?

☐ Yes ☐ No. *Not applicable.*

22. If a firm has been selected, will this firm be retained as the project continues?

☐ Yes ☐ No. *Not applicable.*

23. If a selected firm will not be retained as the project continues, will there be a separate RFP distributed to select an Architectural /Engineering firm for the next phase?

___ Yes ___ No. *Not applicable.*

24. If a design firm has been selected for schematic design and/or feasibility study and/or site selection are they aware of their role, and that they will have their responsibility either fulfilled or will continue upon completion of this phase? Explain if necessary.

___ Yes ___ No. *Not applicable.*

25. If a firm has been retained, have the necessary drawings and specifications been submitted to the HEPC Central Office?

___ Yes ___ No. *Not applicable.*

26. Does this project fall under West Virginia Code §18B-19-8 and was it submitted as required?

___ Yes ___ No. *Not applicable.*

27. If this project is taking precedent over a deferred maintenance project submitted previously, explain here.

No the project is being completed to generate debt service savings.

Section 2 – Cost Information (complete for all projects)

28. Do you anticipate the need for capitalized interest on any bond financing (i.e., to pay interest during construction)? If so, for how many months? When is construction to begin and completed? (*Interest cannot be capitalized more than six months post construction*)

Not applicable.

29. Itemize the capital costs of the project. Estimate the costs of issuance at 2% of the cost of the project if it is to be financed by a bond issue. Please subtotal project costs net of the 2% cost of issuance and then show a gross cost of project including the cost of issuance. Note that the total cost should be used as the AMOUNT BORROWED field of the worksheet. Attach the CO-2 estimate or further estimate of project cost, if available. (***Note: The term of any financing plan or arrangement should be for 30 years or less.***)

Not applicable.

A & E	\$
Land Acquisition	
Sitework/Utilities	
Construction	
Equipment/Furnishings	
Other Costs	
Contingencies	
Subtotal	0
Costs of Issuance (2% of Subtotal above)	
Capitalized Interest (Estimate)	
Debt Service Reserve Fund	
Original Issue Discount	
Management Fee	
Other (specify)	
Subtotal	0
Less Planned Equity Contribution by Institution	

30. What is the anticipated useful life of the project?

The project has a remaining useful life of 35 - 40 years.

31. Discuss the need for a **Reserve Fund** to support the proposed project, any anticipated uses of the reserve during the life of the bonds, and the plan for replenishment of the reserve. The Reserve Fund Limit in the spreadsheet should be approximately 10% of the project cost.

The loan parameters include the funding of a reserve to be held by the Department of Education at approximately 5.3% of loan proceeds. This reserve will be funded from Loan Proceeds. Further, under the terms of the Loan Agreement, the University will be required to maintain a renewal and replacement fund which can be used for all facilities on the University's campus.

32. List and describe any initial **Non-Recurring Costs** related to the project and the source of funding for each of these items.

Loan sizing includes approximately 2% for costs of issuance which are expected to include fees related to the Department of Education administration, execution and legal counsel as well as the costs of the university's other professionals (bond counsel, municipal advisor and trustee).

33. List and estimate the **Incremental Annual Operating Expenses**. Provide any supporting documentation and illustrate how your estimate was made. These expenses include personnel costs, utilities, contractual services, supplies and materials, indirect costs, equipment, etc.

Given this is a refunding, there are not incremental annual operating expenses anticipated in connection with this financing.

Section 3 - Revenue Information. (Complete for all revenue-producing projects)

34. Describe the Revenue Sources that will be used for payment of debt service and the expenses associated with these revenues. Consider what other expenses are planned to be supported by the revenues, and how much revenue will actually be available for debt service. *(Note: The term of any financing plan or arrangement*

should be for 30 years or less.)

- *Gross Operating Revenues (Revenues net of vacancy) for Scholars, Dawson and Sullivan Halls as well as the Student Union Revenues*
 - *Represent a "Gross" pledge - the University will be required to pay debt service before any expenses.*
- *Auxiliary Fees in connection with the facilities above (and specifically excluding Athletics)*
- *Auxiliary Capital Fees*

35. If revenues will be derived from a group of similar facilities (a system) and an increase in system revenues will be used to support the debt, provide justification for any system contribution and any marginal increase in system-wide fees.

No increase will be needed.

36. If revenues will be derived from just one facility of several similar facilities in a campus system, show all fees for all similar facilities and justify any differential in pricing between the facilities.

No related fee changes are anticipated.

37. Will project revenues or revenues pledged to the payment of debt service be available prior to completion of the project? Describe the timing of revenues and when they will be available and sufficient to begin servicing the debt.

All revenues currently pledged to the bonds being refunded are expected to be pledged to this new loan.

38. What studies have been completed to demonstrate the demand for the facility and the reliability of the revenue stream? (Attach copies if available.)

Not applicable.

39. If any portion of the revenues are already pledged or otherwise committed to other debt service payments, provide a schedule of debt service payments (by issue) and cumulatively. Clearly identify the portion of the revenue source that is committed or being used to pay debt service.

Projected cash flows are attached for reference.

40. If any revenues are projected to increase, explain how the projections were calculated. Do not use an automatic growth rate.

Dormitory revenues were projected based on utilization trends, current rents and adjustments for vacancy as well as expectations for enrollment and occupancy. Fees were projected based on historical results with no assumptions for growth going forward.

41. If institutional reserves are to be used to service the debt, include the source of funds, balances for the last five years, and impact on future balances. Identify the authorization for using these funds to pay debt service and other costs.

No institutional reserves will be used for debt service.

42. If any amounts currently used for debt service are expected to be available and used for debt service on this project (i.e., the existing debt will be retired), provide the name(s) of the existing project(s), the bond series, and the annual amount to be available. Address the status of the existing facility's physical condition and plans for repair or maintenance. Conversely, explain why any such amounts scheduled to be available are not planned for use for debt service on this project.

Loans will be used to defease (in their entirety) the University's outstanding Series 2012 and 2013A Bonds. In addition, the Loan will be used to defease the bonds related to the Foundation's outstanding 2013 A bonds. As noted previously, the revenue pledge includes gross operating revenues from Keith Scholars Hall, Dawson Hall and the Student Union.

Provided below are brief summaries of each facility related to this financing.

Keith Scholars Hall - *Constructed in 2014 is our newest dorm. Despite its brick façade, this building is actually a stick build structure. Buildings such as these typically have a service life of around 30-40 years or so.*

Dawson Hall - *A brick and mortar building was constructed in 1923 with renovations in 1977 and 1999. This building had a major renovation in 1999 and is still in good shape from that renovation. It should be usable and serviceable for the next 50 years. The walls were constructed of ¾ inch impact resistance drywall and is holding up very well.*

Student Union - *A brick and mortar building was constructed in 1960 with additions in 1968 and Student Union side had renovations in 2004. We expect the building to be usable for at least another 50 years.*

Provide a copy of the institution's debt policy approved by the Board of Governors.

See attached.

Using the information described above, complete Spreadsheet #2 – Revenue Components

Section 4 - General Financial Condition - Complete this section for all projects.

Provide the following FTE enrollment and admissions information

	Last 5 years				
Enrollment	FY 2020	FY 2019	FY 2018	FY 2017	FY 2016
Undergraduate	1,384	1,441	1,507	1,601	1,586
Graduate & 1st Prof.					
Total	1,384	1,441	1,507	1,601	1,586
On-Campus					
Off-Campus					
Admissions					
Applications Received	3,235	4,495	3,661	7,428	7,399
Applications Accepted	2,863	2,355	1,816	3,105	3,333
Students Enrolled	280	273	328	394	425
Acceptance Rate	88.5%	52.4%	49.6%	41.8%	45.0%
Matriculation Rate	9.8%	11.6%	18.1%	12.7%	12.8%

43. What is the estimated enrollment change resulting from this project?

No change expected.

44. Provide the following ratios and Composite Financial Index for the current year budget as adjusted for the project, the current year budget excluding the new project, and the two preceding fiscal years.

The reported amounts reflect actuals for the two most recent fiscal years. Budgeted results for FY 2021 are not reflected as this refunding is expected to occur before year end which will impact the figures used to determine the ratios. The refunding is expected to generate material savings for the University.

	Actual	Actual
	FY 2020	FY 2019
Ratios (Excluding OPEB liability):		
Primary Reserve Ratio	-0.093	-0.260
Net Operating Revenue Ratio	-0.086	-0.079
Return on Net Assets	-0.030	-0.014
Viability Ratio	-0.151	-0.133
Composite Financial Index	-1.07	-0.89

Section 5 - Capital Lease Projects – Complete only if the financing involves a capital lease.

45. Discuss the alternatives that were considered before deciding that the capital lease structure was the best option.

Not applicable.

46. Who is the Lessor (full name and address)? Who is the Lessee (full name and address)?

Not applicable.

47. Who will manage the facility during and after construction?

Not applicable.

48. Who will be issuing bonds or otherwise financing the project? Will it be tax-exempt debt?

Not applicable.

49. If debt is issued, what portion will not be tax-exempt?

Not applicable.

Section 6 - Public/Private Partnership & Design Build – Complete this section only if the financing involves a public/private partnership or is a design build project.

50. Discuss the alternatives that were considered before deciding on a public/private partnership or design build as the best option.

Not applicable.

51. Design build projects are subject to the “Design Build Procurement Act,” West Virginia Code §5-22A. The

provisions of this Act must be used to select design-builders for authorized projects that are constructed and owned, potentially owned, or ultimately owned by any agency/state institution of higher education. Please describe your plans for complying with the Design Build Procurement Act.

Not applicable.

52. If this is a public/private partnership, please describe the nature of the arrangement and the parties involved.

Not applicable.

53. What type of financing vehicle will be used to fund the project? (Please describe in detail)

Not applicable.

Section 7 - Sustainability and Energy Efficiency

54. Do you have access to the most current version of the HEPC's standards for sustainability and energy efficiency?

☐ Yes ☐ No *Not applicable.*

55. Will this project be proposed as a LEED project?

☐ Yes ☐ No *Not applicable.*

56. If it is to be a LEED project, have you engaged with the necessary professionals to enter the process?

☐ Yes ☐ No *Not applicable.*

57. If you have not engaged the necessary professionals, do you need assistance?

☐ Yes ☐ No *Not applicable.*

58. If is not proposed as a LEED project are you aware of the minimal guidelines required to insure the project is completed using the most current guidelines and standards? (ASHRE 90.1, LEED – see USGBC.org website)

Not applicable.

59. Have you explored any potential existing energy rebates available from your local utilities specific to this project?

Not applicable.

60. Do you need further assistance in proceeding with any of the answers required in this application?

Not at this time.

Definitions of Terms

Auxiliary and Auxiliary Capital Fees Bonds (W. Va. Code §18B-10): Revenue bonds issued to finance the planning, design, construction and equipping of an auxiliary facility i.e., Student Unions and Recreation Facilities, Residence Halls, Dining Halls, Athletic Facilities, Bookstores, Faculty and Staff Housing and other facilities not considered E&G Facilities. Auxiliary fees are pledged to pay debt service for these revenue bonds.

Capital Lease: In accordance with the Financial Accounting Standards Board (FASB), capital leases are defined as leases which meet any one (or more) of the following criteria:

- 1) Transfer of ownership of the property to the lessee at the end of the lease term;
- 2) Bargain purchase option at the end of the lease term;
- 3) Lease term equal to 75% or more of the estimated economic life of the leased property; and
- 4) Present value of the net minimum lease payments equal to or exceeding 90% of the fair market value of the property.

Capital leases are considered long-term obligations for accounting purposes.

Capitalized Interest: Interest to be paid on the bonds during the period of construction that is financed as part of the bond issue (i.e., paid with bond proceeds). Capitalizing interest increases the overall cost of borrowing, but may be necessary in cases where project revenues are to be used to pay debt service. Conversely, where revenues are already being collected (i.e., a fee or fee increase has already been implemented), the use of capitalized interest may not be appropriate.

Educational and General (E&G) Capital Fees Bonds (W. Va. Code §18B-10): Revenue bonds issued to finance the planning, design construction and equipping of E&G facilities Fees collected by the institutions to support existing and future system-wide debt and institutional debt, capital projects funded on a cash basis, campus and building renewal, and repairs and alterations of E&G Facilities.

Educational and General (E&G) Facility: A building or structure used for instruction and instructional support purposes, and includes classroom, laboratory, library, computer laboratory, faculty and administrative office and other academic support spaces.

Incremental Annual Operating Expenses: The increase in operating costs attributable to the project. For example, a new dormitory added to a dormitory system would presumably increase system operating costs (e.g., supplies & material, utilities, personnel (janitorial, maintenance), equipment, etc.)

Non-recurring costs: One-time project costs (e.g., land acquisition, special utility fees, etc.) required for project completion.

Other: Debt secured by another revenue stream than those identified above. Please identify source and provide Code citation that authorizes the pledge of this revenue stream for issuance of revenue bonds or to incur debt.

Private Use: Private use means any use (directly or indirectly) by a trade or business that is carried on by persons or entities other than state or local governmental entities. Such use could involve ownership, management, service or incentive payment contracts, research agreements, leases, subleases, loans, or any other arrangement that conveys special legal entitlements or economic benefit to the non-governmental entity from the beneficial use of the project.

Reserve Fund: An amount set aside, usually from project revenues or bond proceeds, to mitigate the impact of interruptions in the ability of the project to generate sufficient net revenues to pay debt service (e.g., debt service reserve, repair and replacement reserve). In certain circumstances, the presence of a reserve can enhance the credit. For the purposes of the feasibility study, reserve funds are generally for debt service and are funded from project or institutional revenues. 9(c) projects are expected to generate sufficient revenues to fund a reserve at an amount equal to approximately 10% of the amount financed.