

Shepherd University Board of Governors

Minutes of the Meeting of June 14, 2007

The Shepherd University Board of Governors met on June 14, 2007 in the Robert C. Byrd Center for Legislative Studies, Shepherd University, Shepherdstown, West Virginia, in a regular meeting. Members participating were: Lauri Bridgeforth, Gat Caperton (by phone), Doris Griffin, Kenneth Harbaugh, Robert McMillan, Andrew Michael, Lacy Rice III (by phone), Brent Robinson and John Sherwood. Also present were Shepherd University President David Dunlop, members of the executive staff and others. Board members Manny Arvon, Anders Henriksson and Christopher Raines were absent from the meeting.

Chair Sherwood convened the meeting of the Board of Governors at 2:00 p.m.

1. MINUTES OF THE MEETING OF MAY 10, 2007

M (Griffin) S (Bridgeforth), PASSED, that the minutes of the May 10, 2007 meeting of the Board of Governors be adopted as presented in the agenda book. [Members participating by phone were individually polled.]

2. PRESIDENT'S REPORT

In addition to the President's Report that was included in the agenda book, President Dunlop shared with the Board his comments regarding the dedication ceremony of Erma Ora Byrd Hall.

3. FINAL APPROVAL OF WELLNESS CENTER FINANCING

M (McMillan) S (Michael), PASSED, that the following resolution be adopted by the Board. [Members participating by phone were individually polled.]

RESOLVED, That the Shepherd University Board of Governors adopts the resolution for approval of the Wellness Center financing as printed in the agenda book, amended by changing the date reference in the first line of the second paragraph, relating to the Inducement Resolution, to March 8, 2007.

RESOLUTION OF THE SHEPHERD UNIVERSITY BOARD OF GOVERNORS

A RESOLUTION AUTHORIZING THE ISSUANCE BY THE SHEPHERD
UNIVERSITY BOARD OF GOVERNORS OF NOT TO EXCEED \$21,600,000
IN AGGREGATE PRINCIPAL AMOUNT OF SHEPHERD UNIVERSITY
BOARD OF GOVERNORS REVENUE BONDS (SHEPHERD UNIVERSITY

WELLNESS CENTER PROJECT), SERIES 2007; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE TO A BOND TRUST INDENTURE WITH RESPECT TO THE BONDS; AUTHORIZING THE SALE OF THE BONDS TO FERRIS, BAKER WATTS, INCORPORATED, PURSUANT TO A BOND PURCHASE AGREEMENT RELATING THERETO AND THE EXECUTION AND DELIVERY OF SUCH BOND PURCHASE AGREEMENT; AUTHORIZING OR RATIFYING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT FOR THE BONDS AND AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT RELATING TO THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS AND AGREEMENTS IN CONNECTION WITH THE BONDS INCLUDING BUT NOT LIMITED TO A CONTINUING DISCLOSURE AGREEMENT AND A TAX REGULATORY AGREEMENT; DELEGATING TO THE PRESIDENT OF SHEPHERD UNIVERSITY AND THE CHAIRPERSON AND VICE-CHAIRPERSON OF SHEPHERD UNIVERSITY BOARD OF GOVERNORS CERTAIN RESPONSIBILITIES IN CONNECTION WITH THE SALE AND ISSUANCE OF THE BONDS; AND TAKING OTHER ACTIONS IN CONNECTION WITH THE SALE AND ISSUANCE OF THE BONDS.

WHEREAS, Shepherd University (the “University”) has undertaken the planning, design, acquisition, construction and equipping of a new wellness center on its campus in Shepherdstown, West Virginia and other capital improvements for use by the University (collectively, the “Project”); and

WHEREAS, by Resolution adopted on March 8, 2007 (the “Inducement Resolution”), the Shepherd University Board of Governors (the “Board”) approved, and by this Resolution does hereby approve, the Project and the financing of the costs thereof through the issuance of revenue bonds by the Board; and

WHEREAS, pursuant to the authority contained in Chapter 18B, Article 10 and Chapter 18, Article 23 (collectively, the “Act”), this Board is authorized to issue the Bonds (as described herein) for the purposes of (i) financing the costs of planning, design, acquisition, construction and equipping of the Project, (ii) establishing a debt service reserve fund for the Bonds, (iii) capitalizing interest on the Bonds, and (iv) paying the costs of issuance of the Bonds and related costs; and

WHEREAS, this Board has determined to issue not to exceed \$21,600,000 in aggregate principal amount of its Revenue Bonds (Shepherd University Wellness Center Project), Series 2007 (the “Bonds”), for the purposes set forth above; and

WHEREAS, the West Virginia Higher Education Policy Commission has previously approved the issuance of the Bonds and the Project; and

WHEREAS, the Board has previously issued its Revenue Bonds (Shepherd University Residence Halls Projects) Series 2005 on May 24, 2005 in the original aggregate principal amount of \$22,925,000 (the “Prior Bonds”) pursuant to that certain Bond Trust Indenture dated as of May 1, 2005 by and between the Board and WesBanco Bank, Inc., as Bond Trustee (the “Original Indenture”); and

WHEREAS, the Bonds will be issued pursuant to the terms of and secured under the Original Indenture, on parity with the Prior Bonds, pursuant to a First Supplemental Indenture (the “First Supplemental Indenture”) to the Original Indenture to be executed by the Board and WesBanco Bank, Inc., as Bond Trustee (the “Trustee”), in connection with the issuance of the Bonds; and

WHEREAS, the principal of, premium, if any, and interest on the Bonds will be payable from the Auxiliary Fees and Auxiliary Capital Fees, as defined in the Act, collected by the University, including but not necessarily limited to the revenues of all dormitories, housing facilities, residence halls and food service facilities of the University, and the required educational and general capital fees, as defined in the Act, imposed on students of the University for the purpose of supporting debt service, capital projects and campus maintenance and renewal for the University’s education and general educational facilities, exclusive of that component part of the required educational and general capital fees of the University that constituted registration and tuition fees in effect as of March 21, 2004, as further set forth in the Original Indenture, as supplemented by the First Supplemental Indenture (collectively, the “Indenture”); and

WHEREAS, the Bonds will be secured, on parity with the Prior Bonds, by a pledge of the Auxiliary Fees and Auxiliary Capital Fees, as defined in the Act, collected by the University, including but not necessarily limited to the revenues of all dormitories, housing facilities, residence halls and food service facilities of the University, and the Required Educational and General Capital Fees, as defined in the Act, imposed on students of the University for the purpose of supporting debt service, capital projects and campus maintenance and renewal for the University’s education and general educational facilities, exclusive of that component part of the required educational and general capital fees of the University that constituted registration and tuition fees in effect as of March 21, 2004, the revenues pledged to secure the payment of the Bonds being more particularly described in the Indenture and other amounts held under the Indenture (the “Pledged Revenues”), all such pledges to be subject to all prior pledges thereof, if any, and otherwise in the manner and to the extent to be provided for in the Indenture, and the Bonds shall be special obligations of the State and shall not constitute debts of the State;

WHEREAS, the Bonds will contain on the faces thereof provisions as aforesaid and as provided below; and

WHEREAS, it is in the best interest of this Board to grant to the President of the University and the Chairperson and Vice Chairperson of the Board (each, an “Authorized Officer”) the power and authority to establish the final forms, terms and provisions of and to execute the Bonds, the First Supplemental Indenture, the Bond Purchase Agreement, the Preliminary Official Statement and Official Statement, each as herein defined, and related closing documents and certificates; and

WHEREAS, this Board finds and represents that it has full power and authority to issue the Bonds and to make the pledges for the payment thereof as described herein and more particularly set forth in the Indenture and the Bonds, and to execute and deliver the First Supplemental Indenture and such other documents hereinafter described and, for the benefit of the owners of the Bonds, to grant a lien on and security interest in the Pledged Revenues, all

pursuant to the Act, and to execute and deliver such other documents and to take the actions contemplated thereby;

NOW, THEREFORE, BE IT RESOLVED BY SHEPHERD UNIVERSITY BOARD OF GOVERNORS AS FOLLOWS:

Section 1. Findings and Determinations. This Board specifically finds and determines as follows:

(a) It has full power and authority to issue the Bonds and to make the pledges for the payment thereof as described herein and in the Indenture, and to enter into the First Supplemental Indenture and the other agreements relating to the Bonds and the Project, and this Board has taken or will take by the adoption of this Resolution all actions necessary to authorize its proper officers to sign, seal and deliver the First Supplemental Indenture, the Bond Purchase Agreement, the Bonds and the other agreements relating thereto and to authorize or ratify the distribution of the Preliminary Official Statement and authorize the distribution of an Official Statement relating to the Bonds.

(b) The Resolution is adopted pursuant to and in accordance with the provisions of the Act, and the Bonds shall be issued pursuant to the Act.

(c) The Project is hereby approved, ratified and confirmed, and it is estimated that the cost of the Project will not be more than \$21,600,000.

(d) It is in the best interests of this Board and the University that an Authorized Officer have the power and authority to approve the forms of various documents and to execute and deliver one or more certificates of this Board (whether one or more, the "Certificate of Determination") setting forth the final terms and provisions of the Bonds, the First Supplemental Indenture, the Bond Purchase Agreement and the other documents and agreements relating to the Bonds.

Section 2. Bonds Authorized. There is hereby authorized, subject to the provisions of the Resolution, the Certificate of Determination and the Indenture, the issuance by this Board of not to exceed \$21,600,000 in aggregate principal amount of the Bonds for the purposes of (i) financing the costs of the planning, design, acquisition, construction and equipping of the Project, (ii) establishing a debt service reserve fund for the Bonds, (iii) capitalizing interest on the Bonds; and (iv) paying the costs of issuance of the Bonds and related costs.

Section 3. Details of the Bonds. (a) The Bonds shall contain a recital that they are issued pursuant to the Act and shall be designated as provided in the First Supplemental Indenture.

(b) The Bonds shall be in the aggregate principal amount not to exceed \$21,600,000 in the aggregate, bear interest at the rates, mature in the years and amounts, be subject to mandatory redemption, optional redemption and extraordinary redemption, and have such other terms as set forth in the Certificate of Determination relating to the Bonds.

(c) The form of the Bonds and other details with respect thereto shall be as set forth in the First Supplemental Indenture.

Section 4. Sale of Bonds. The Bonds shall be sold by this Board to Ferris, Baker Watts, Incorporated (the “Underwriter”), pursuant to the Bond Purchase Agreement to be executed and delivered by an Authorized Officer, in such form as the Authorized Officer executing the same may deem necessary or desirable, his or her execution of such document to be conclusive evidence of approval of the form of such Bond Purchase Agreement, at the purchase price set forth in the Certificate of Determination, plus accrued interest on the Bonds from their dated date to the date of delivery and payment for the Bonds, on the terms and conditions to be set forth in the Bond Purchase Agreement and upon the basis of the representations therein and herein set forth. Each Authorized Officer and the Secretary of this Board are hereby authorized and directed to carry out or cause to be carried out all obligations of this Board under said Bond Purchase Agreement, when executed, and the Chairperson of this Board is hereby authorized and directed to execute, and to request the Governor and the Secretary of State of West Virginia to execute, and to deliver the Bonds to the Trustee for authentication and to instruct the Trustee to deliver the Bonds to the Underwriter upon receipt of the purchase price thereof in accordance with the provisions of the Bond Purchase Agreement, and to execute and deliver all documents and instruments required in connection therewith.

Section 5. Official Statement. The preparation and distribution of a preliminary official statement with respect to the Bonds (the “Preliminary Official Statement”), in such form approved by an Authorized Officer, are hereby authorized or ratified and approved. An Authorized Officer is hereby authorized and directed to execute and deliver a final official statement on behalf of this Board for the Bonds, which final official statement shall be in the form of the preliminary official statement with such changes, insertions and omissions as may be required to reflect the terms of the sale of the Bonds and as the Authorized Officer executing the same may approve (the “Official Statement”). The execution of the Official Statement by an Authorized Officer shall be conclusive evidence of such approval. Copies of the Official Statement are hereby authorized to be prepared and furnished to the Underwriter for distribution.

Section 6. Certificate of Determination for the Bonds. Each Authorized Officer shall have the power and authority to execute and deliver the Certificate of Determination for the Bonds, which may include, without limitation, provisions (i) fixing the aggregate principal amount of the Bonds to be issued, not to exceed \$21,600,000, (ii) fixing the maturity schedule for such Bonds, such maturity to be not prior to June 1, 2008, and not later than December 1, 2038, (iii) fixing interest rates or yields for such Bonds, such rates or yields to result in a net interest cost not to exceed seven percent (7%) per annum, (iv) fixing the amounts and times of mandatory redemption for such Bonds, if any, (v) fixing optional redemption provisions for such Bonds, including times and redemption prices, and (vi) fixing the purchase price for such Bonds, which may include underwriting and original issue discounts and premiums, or any thereof.

Section 7. First Supplemental Indenture; Other Documents and Actions. Each Authorized Officer is authorized and directed to approve the form, terms and provisions of the First Supplemental Indenture and each Authorized Officer is authorized and empowered for and on behalf of this Board to execute, acknowledge and deliver the First Supplemental Indenture and any other document, certificate, instrument or agreement required by the Act, this Resolution, the Bond Purchase Agreement or the Indenture or otherwise necessary or convenient to carry out the transactions contemplated by this Resolution, the Bond Purchase Agreement or the Indenture. Each Authorized Officer, the Secretary and any other proper officers of this Board are further hereby authorized and directed to execute and deliver any and all papers and

instruments, and certificates required in order to comply with state and federal securities and tax laws, regulations, practices and procedures upon distribution of the Official Statement or sale of the Bonds and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution, the Bond Purchase Agreement or the Indenture.

Section 8. Bond Counsel. Bowles Rice McDavid Graff & Love LLP is hereby appointed as bond counsel for the Bonds.

Section 9. Application of Bond Proceeds. The proceeds of sale of the Bonds, including accrued interest, shall be applied as provided in the First Supplemental Indenture as executed by an Authorized Officer.

Section 10. Special Obligations. The Bonds shall be secured by the pledge effected by the Indenture and shall be payable and secured by a pledge of the Pledged Revenues as set forth in the Indenture and the Certificate of Determination and any other funds or assets described in the Indenture. The Bonds, together with the interest thereon, are special obligations of the State and shall not constitute a debt of the State, and the credit or taxing power of the State shall not be pledged therefor, but the Bonds shall be payable only from the revenues and funds pledged for their payment as provided in the Indenture. No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds 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 or the State or any person executing the Bonds, and neither members of this Board nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

Section 11. Delivery of Bonds. The Bonds shall be executed as provided herein and in accordance with the provisions of the Indenture and shall be delivered to the Underwriter in accordance with the provisions of the Bond Purchase Agreement.

Section 12. Effect. This Resolution shall go into effect immediately upon adoption.

Adopted this 14th day of June, 2007.

4. ELECTIONS FOR 2007-2008

Mr. Brent Robinson nominated Mr. Robert McMillan as Chair, Mr. Andrew Michael as Vice Chair, and Mr. Gat Caperton as Secretary.

M (Sherwood) S (Griffin), PASSED, that the following resolution be adopted by the Board. [Members participating by phone were individually polled.]

RESOLVED, That nominations for office be closed; and that Mr. McMillan, Mr. Michael, and Mr. Caperton be duly elected as officers of the Board.

The Chair-elect nominated Mr. Gat Caperton, Ms. Doris Griffin, and Mr. Lacy Rice III to serve on the Audit Committee.

M (McMillan) S (Harbaugh), PASSED, that the following resolution be adopted by the Board. [Members participating by phone were individually polled.]

RESOLVED, That nominations for the Audit Committee be closed; and that Mr. Gat Caperton, Ms. Doris Griffin, and Mr. Lacy Rice III be duly elected as members of the Audit Committee. Mr. Caperton will serve as Chair of the committee.

5. MEETING SCHEDULE FOR 2007-2008

The Chair-elect led a discussion about the prospective meeting schedule for 2007-2008, and the Chair-elect advised that he would consult with Dr. Shipley further before developing his recommendations for meeting dates.

6. SPECIAL RESOLUTION

M (McMillan) S (Bridgeforth), PASSED, that the following resolution be adopted by the Board. [Members participating by phone were individually polled.]

WHEREAS, John M. Sherwood served with distinction as Chair of the Shepherd University Board of Governors from 2005 to 2007; and

WHEREAS, Mr. Sherwood has demonstrated his commitment and dedication to Shepherd University by donating countless hours to Board work, including numerous travel requirements; and

WHEREAS, Mr. Sherwood showed outstanding leadership ability, political savvy, and integrity while serving as Chair of the Board; and

WHEREAS, Mr. Sherwood brought to bear his business expertise and community relationships for the benefit of Shepherd University; and

WHEREAS, Mr. Sherwood ably led the institution in a successful presidential search; and

THEREFORE, BE IT RESOLVED, THAT the Shepherd University Board of Governors honors Mr. Sherwood for his record of strong leadership, expresses to him its sincere gratitude and admiration, and looks forward to his continued service to the University; and

FURTHER, BE IT RESOLVED, THAT this resolution be inscribed upon the minutes of the June 14, 2007 Board of Governors meeting and that a copy of the resolution be presented to Mr. Sherwood.

7. **SPECIAL RESOLUTION**

M (Sherwood) S (McMillan), PASSED, that the following resolution be adopted by the Board. [Members participating by phone were individually polled.]

WHEREAS, Mr. Kenneth Harbaugh joined the Board of Governors on February 1, 2007 to fill the unexpired term of his predecessor, and served with dedication to duty as a Board member while also continuing to represent Shepherd on the statewide ACCE; and

WHEREAS, Mr. Harbaugh joined the Board at the critical time of the presidential search process, and contributed with diligence, incite, and wisdom throughout that process; and

WHEREAS, Mr. Harbaugh has consistently represented his constituents with vigor, sensitivity, and attentiveness to detail; and

WHEREAS, Mr. Harbaugh chose to not be a candidate for election for a full term on the Board so that he can concentrate his time effectively to the further service to the University on the ACCE;

THEREFORE, BE IT RESOLVED, THAT the Shepherd University Board of Governors honors Mr. Harbaugh for his faithful service to the University and to the Board of Governors, and expresses to him its sincere gratitude; and

FURTHER, BE IT RESOLVED, THAT this resolution be inscribed upon the minutes of the June 14, 2007 Board of Governors meeting and that a copy of the resolution be presented to Mr. Harbaugh.

8. **SPECIAL RESOLUTION**

M (Sherwood) S (Michael), PASSED, that the following resolution be adopted by the Board. [Members participating by phone were individually polled.]

WHEREAS, Dr. David L. Dunlop has served as the 14th President of Shepherd University since July 15, 1996; and

WHEREAS, President Dunlop assumed office at a time of enormous challenges and difficulties for the institution; and

WHEREAS, Dr. Dunlop worked tirelessly and with an enduring commitment to integrity and collegiality to restore the morale of the faculty and staff of the University, and restored their commitment to a common sense of purpose in advancing the institution's mission of service to the Eastern Panhandle of West Virginia; and

WHEREAS, Dr. Dunlop demonstrated extraordinary leadership in successfully guiding the University through the critical process of re-establishing NCATE accreditation, chartering the development of structured institutional self-assessment, and University accreditation by the North Central Association of Colleges and Universities; and

WHEREAS, President Dunlop exhibited courage and foresight in responding faithfully to the public policy decisions of the State Legislature to help the former component community college grow into an independent institution, while ensuring that the University continued to grow in its quality and its financial health; and

WHEREAS, when the Legislature restructured the governance of higher education institutions in 2000 Dr. Dunlop was especially helpful to the new Board of Governors in helping its members to develop in the effectiveness of their trusteeship to the University; and

WHEREAS, President Dunlop has preserved and enhanced the academic quality of the baccalaureate programs of the University while creating and promoting new masters degree programs which have consistently flourished and which are providing educational opportunities that directly enhance the quality of life and the economic vibrancy of the Eastern Panhandle; and

WHEREAS, Throughout his tenure of service at Shepherd University, Dr. Dunlop has consistently been an advocate for the advancement of the mission of the University, which includes its important role as a center of cultural enhancement for the community, civic improvement, and inclusion of all persons in the educational, cultural and recreational opportunities of the academy; and

WHEREAS, President Dunlop's successful administration of the University has brought steady enrollment growth, increasing by 35% in his eleven years, and record enrollment for the baccalaureate programs; and

WHEREAS, Dr. Dunlop has masterfully worked with the many external constituencies of the University to make it possible to complete or to have begun, during his tenure, over \$100 million of capital construction on the campus.

THEREFORE, BE IT RESOLVED, THAT the Shepherd University Board of Governors honors President David Dunlop for his record of exemplary service to the University and to the Board of Governors and expresses to him the gratitude and enduring appreciation of the Board, the University's alumni, and all who are friends of Shepherd University, as he concludes his presidency; and

FURTHER, BE IT RESOLVED, THAT the Shepherd University Board of Governors confers upon David L. Dunlop the title and rank of President and Professor of Science Education, *Emeritus*; and

FURTHER, BE IT RESOLVED, THAT this resolution be inscribed upon the minutes of the June 14, 2007 Board of Governors meeting and that a copy of the resolution be presented to Dr. Dunlop.

9. NEW BUSINESS

There was no new business discussed at the meeting.

10. PUBLIC COMMENTS

There were no public comments made at the meeting.

11. EXECUTIVE SESSION

M (Griffin) S (Michael), PASSED, That pursuant to Section 4 of Article 9A of Chapter 6 of the WV Code, the Board enter into executive session for the purpose of discussing matter of awards and honors.

At the conclusion of the executive session, the Board returned to open session.

There being no further business, the meeting was adjourned.

John M. Sherwood
Chair

Manny P. Arvon
Secretary