

## **FINAL APPROVAL OF WELLNESS CENTER FINANCING**

The University staff has continued to work with the project architects to move the design of the facility toward issuance of construction documents. The HEPC has approved the proposed financing plan. The Feasibility Study for the financing plan was included in the April agenda book. The University has submitted its request to the Governor for approval of the bond issuance. The current schedule for the project is as follows:

June 14, 2007	Final Action by BOG approving bond issuance
July 16, 2007	Submission of information to Moody's and bond insurers
July 31, 2007	Obtain bond rating
Late July / Early August	Request for Construction Bids issued
August 3, 2007	Obtain bond insurance
August 7, 2007	Issue Preliminary Official Statement
August 28, 2007	Close Bonds
Late August	Open Construction Bids

The following Resolution would grant full authority to the Board Chair, Vice Chair, and Secretary, as well as the President and the Vice President for Administration and Finance, to proceed with the bond issuance, within the margins of the parameters provided: Maximum issuance of \$21,600,000; Maximum interest rate of 7%; Maximum term 30 years. The resolution would authorize the University staff, Bond Counsel and the Underwriter to take all appropriate and necessary steps to implement the bond issuance, again within those parameters.

The following resolution is recommended for adoption by the Board:

**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 14<sup>th</sup> day of June, 2007.