

Shepherd University Board of Governors

Minutes of the Meeting of January 13, 2005

The Shepherd University Board of Governors met on January 13, 2005, in the Byrd Center for Legislative Studies, Shepherd University, Shepherdstown, West Virginia, in a regular meeting. Members participating were: Lauri Bridgeforth, Matthew Gay, Doris Griffin, Anders Henriksson, Robert McMillan, Andy Michael, Barbara Pichot, John Sherwood, and Dan Starliper. Also present were Shepherd University President David Dunlop, members of the executive staff, and others.

Chair Michael convened the meeting of the Board of Governors at 2:45 p.m.

1. MINUTES OF THE MEETING OF NOVEMBER 11, 2004

M (Starliper) S (Sherwood), PASSED, that the minutes of the November 11, 2004 meeting of the Board of Governors be adopted as presented in the agenda book.

2. SHEPHERD UNIVERSITY REPORT

President Dunlop, on behalf of Governor Manchin, extended an invitation to attend the Governor's Eastern Panhandle Inaugural Festivities which will be held January 19, 2005 at the Martinsburg Holiday Inn.

Dr. Dunlop reported that preliminary Spring '05 enrollment data indicates that Shepherd University's head count is up 9% and FTE is up 3.1% over last spring. Freshman and transfer rates are up as well. Currently, enrollment numbers for Fall '05 are significantly greater than last year at this time.

Dr. Dunlop announced that the consultant's report from the Board of Governors retreat has not yet been received, but is expected.

3. COMMUNITY AND TECHNICAL COLLEGE OF SHEPHERD REPORT

In the absence of President Checkovich, Dr. Billie Unger, Director of Collaborative Programs and Professor of Developmental English, attended the meeting and reported that Dr. Checkovich was in Charleston presenting the Community and Technical College of Shepherd Compact to the West Virginia Council for Community and Technical College Education. She also shared with the Board that the CTC of Shepherd Board of Advisors will be attending a retreat soon in preparation for becoming a Board of Governors after separate accreditation is granted.

4. **RESIDENTIAL APARTMENT COMPLEX FUNDING FREASIBILTY STUDY AND AUTHORIZING RESOLUTION**

M (McMillan) S (Sherwood), PASSED, that the following resolution be adopted 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 \$23,595,000 IN AGGREGATE PRINCIPAL AMOUNT OF SHEPHERD UNIVERSITY BOARD OF GOVERNORS REVENUE BONDS (SHEPHERD UNIVERSITY RESIDENCE HALLS PROJECTS), SERIES 2005; AUTHORIZING THE REFUNDING OF THE SHEPHERD UNIVERSITY BOARD OF GOVERNORS UNIVERSITY FACILITIES REVENUE NOTES, SERIES 2004A WITH A PORTION OF THE PROCEEDS OF SUCH REVENUE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A 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 residence hall on the West Campus of the University and has also undertaken the planning, design, acquisition, construction and equipping of certain renovations and improvements to Shaw Hall and Thacher Hall and other capital renovations and improvements to the University's residence halls (collectively, the "Project"); and

WHEREAS, by Resolution adopted on January 8, 2004, as supplemented and amended by Resolutions adopted on April 8, 2004 and November 11, 2004 (collectively, 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, in order to finance a portion of the costs of the Project pending issuance of the aforesaid revenue bonds, on September 9, 2004, the Board issued its University Facilities Revenue Notes, Series 2004A in the original aggregate principal amount of \$1,865,000 (the “Notes”); 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, (iv) refunding the Notes, and (v) paying the costs of issuance of the Bonds and related costs; and

WHEREAS, this Board has determined to issue not to exceed \$23,595,000 in aggregate principal amount of its Revenue Bonds (Shepherd University Residence Halls Projects), Series 2005 (the “Bonds”), for the purposes set forth above; and

WHEREAS, either the West Virginia Higher Education Policy Commission has previously approved the issuance of the Bonds and the Project or such approval will be a condition precedent to the sale and issuance of the Bonds; and

WHEREAS, the Bonds will be issued pursuant to the terms of and secured under a Bond Trust Indenture and Security Agreement (the “Indenture”), between the Board and a trustee to be designated by an Authorized Officer in the Certificate of Determination hereinafter described (the “Trustee”); and

WHEREAS, the principal of, premium, if any, and interest on the Bonds will be payable from all or a portion 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 may also be payable from all or a portion of the required educational and general capital fees, as defined in the Act, imposed on students of the University, 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, such sources of payment to be as set forth in the Indenture as finally executed by an Authorized Officer, as hereinafter defined; and

WHEREAS, the Bonds will be secured by a pledge of all or a portion 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 may also be secured by a pledge of all or a portion of the required educational and general capital fees, as defined in the Act, imposed on students of the University, 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 to be as set forth in the Indenture as finally executed by an Authorized Officer, as hereinafter defined, 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 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 to be more particularly set forth in the Indenture and the Bonds, and to execute and deliver the 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 to be more particularly described and set forth in the Indenture, and to enter into the 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 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 \$23,595,000.

(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 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 \$23,595,000 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; (iv) refunding the Notes, and/or (v) 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 Indenture.

(b) The Bonds shall be in the aggregate principal amount not to exceed \$23,595,000 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 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 \$23,595,000, (ii) fixing the maturity schedule for such Bonds, such maturity to be not prior to June 1, 2006, and not later than December 1, 2036, (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, (vi) fixing the purchase price for such Bonds, which may include underwriting and original issue discounts and premiums, or any thereof, (vii) establishing the date of the Indenture, (viii) establishing the revenues pledged to the repayment of the Bonds, which revenues may include all or a portion 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 may also include all or a portion of the required educational and general capital fees, as defined in the Act, imposed on students of the University, 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 foregoing pledges of revenue to be subject to all prior pledges thereof, if any, and (ix) designating a Trustee under the Indenture.

Section 7. Indenture; Other Documents and Actions. Each Authorized Officer is authorized and directed to approve the form, terms and provisions of the Indenture and each Authorized Officer is authorized and empowered for and on behalf of this Board to execute, acknowledge and deliver the Indenture and any other document, certificate, instrument or agreement required by the Act, the 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, including but not limited to an escrow agreement relating to the refunding of the Notes, if required, 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 the Resolution, the Bond Purchase Agreement and 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 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 finally determined 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 the 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 13th day of January, 2005.

SHEPHERD UNIVERSITY
BOARD OF GOVERNORS

5. IKENBERRY HALL ADDITION PROJECT

M (McMillan) S (Bridgeforth), PASSED, that the following resolution be adopted by the Board:

RESOLVED, That the Shepherd University Board of Governors approves the increase of the project budget for the Ikenberry Hall Addition and approves a construction budget of \$900,000.

6. ANNUAL PERSONNEL DATA REPORT

Alan Perdue, General Counsel, presented the annual personnel data report which included information on faculty and staff demographic and salary information.

7. CENTER FOR CONTEMPORARY ART BUILDING PROJECT

President Dunlop presented information to the Board regarding the construction phases and alternatives that the coordinating committee for the Center for Contemporary Arts (CCA) has reviewed and recommended.

Mr. Dow Benedict, Dean of the School of Arts and Humanities, explained his concept of the building use for each construction phase.

Following the discussion, the Board agreed that the project should move forward as recommended by the CCA coordinating committee.

8. **TUITION RECIPROCITY AGREEMENT BETWEEN WEST VIRGINIA AND MARYLAND**

M (Starliper) S (McMillan), PASSED, that the following resolution be adopted by the Board:

RESOLVED, That the Shepherd University Board of Governors authorizes the President to terminate the *Tuition Reciprocity Agreement between Maryland and West Virginia*, modified on June 11, 1999, and signed by officials in those two states; and

FURTHER RESOLVED, That the President is authorized to give notice to the other parties involved that Shepherd's withdrawal from the agreement will be effective as of January 1, 2006.

9. **ANNUAL STAFF DEVELOPMENT REPORT**

Dr. Dan Starliper, Director of Human Resources, and Ms. Nancy Roesel, member of the Classified Employees Council, presented the annual Staff Development Report, reflecting staff continuing education activity during the past year.

10. **ANNUAL PUBLIC SAFETY REPORT**

Mr. Grover Boyer, Director of Public Safety, presented the annual Public Safety/Campus Crime report which included a review of campus crime data over several years as well as information on campus parking management data.

11. **NEW BUSINESS**

Dr. Sharon Kipetz, VP for Student Affairs, distributed informational handouts and invited Board members to attend the Spring 2005 Multicultural Programs sponsored by the Office of Multicultural Student Affairs.

12. **PUBLIC COMMENTS**

There were no public comments made at the meeting.

There being no further business, the meeting was adjourned.

Andrew D. Michael
Chair

Robert A. McMillan
Secretary