



OHIO  
UNIVERSITY

# Board of Trustees

Ohio University

## Minutes

December 14, 2005

**MINUTES OF THE MEETING OF  
THE BOARD OF TRUSTEES OF OHIO UNIVERSITY**

**Wednesday, December 14, 2005**

**Fawcett Center, Columbus, Ohio**

**THE OHIO UNIVERSITY BOARD OF TRUSTEES**  
**MINUTES OF December 14, 2005 MEETING**

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## **ROLL CALL**

Seven Trustees were present - Chairman Dr. R. Gregory Browning, C. Daniel DeLawder, Dr. Norman E. "Ned" Dewire, Dr. Gene T. Harris, C. Robert Kidder, Larry L. Schey, and Robert D. Walter. This constituted a quorum.

Student Trustees Aslyne Rodriguez and Micah Mitchell were present as was National Trustee Charles R. Stuckey Jr.

Also attending were President Roderick J. McDavis and Board Secretary Alan Geiger.

## **APPROVAL OF THE MINUTES OF THE MEETINGS of October 13, 2005**

(As previously distributed and including Resolution 2005-2019 which was inadvertently omitted from the previous draft)

On a motion by Mr. Kidder and a seconded by Dr. Harris all voted aye to approve as amended.



OHIO  
UNIVERSITY

Board of Trustees  
Cutler Hall  
Athens OH 45701-2979

M E M O R A N D U M

**Date:** December 2, 2005

**To:** Chairman and Members of the Board of Trustees, President McDavis

**From:** Alan H. Geiger, Secretary to the Board *A.*

**Subject:** October 13, 2005 Board of Trustee Meeting Minutes

There are three corrections to the draft minutes of the October 13 Board of Trustees meeting. Resolution 2005 - 2019, Signature Authority, was inadvertently left out of the draft, and Trustee Dr. Ned Dewire was in attendance at the October 13<sup>th</sup> Executive Session. In addition, Committee minutes for the October 12<sup>th</sup> Student Life, Human Resources, and Athletics meeting are enclosed. The November 23<sup>rd</sup> Audit, Finance, Facilities and Investment meeting minutes are included for your information.

Mr. Walter presented a motion for approval of the resolution. Mr. DeLawder seconded the motion. All agreed.

## Resolution 2005- 2019

WHEREAS, in 1976 the Ohio University Board of Trustees adopted Resolution 1976-304 regarding delegation of authority to Ohio University officers. Since that time a number of developments have resulted in significant operational changes and complexities, and Ohio University needs a new delegation of authority policy adopted by the Ohio University Board of Trustees.

WHEREAS, it is further time to update this Resolution in light of the significant federal, state, and local laws and regulations and numerous Ohio University policies and procedures that are involved, First, the President is authorized to approve all Ohio University Policies and Procedures. Second, the Board of Trustees hereby assigns the delegation of authority, particularly signature authority, to the President of Ohio University and to the designated other officers, with the provision the President may alter the delegation of authority in consultation with the Executive Committee of The Ohio University Board of Trustees, and

WHEREAS, The Ohio University Board of Trustees are the governing authority of The Ohio University under Chapters 3345 and 3337 of the Ohio Revised Code, and The Ohio University By-Laws.

NOW THEREFORE, BE IT RESOLVED, The Ohio University Board of Trustees hereby delegates the authority to sign documents, agreements and other instruments on behalf of Ohio University to the University officers as follows:

1. The President
  - a. The President shall approve all policies and procedures of the Ohio University, including those developed and adopted as part of the Ohio University Policy and Procedure Manual.
  - b. The President in consultation with the Provost and Executive Committees of the Faculty Senate, Administrative Senate, and Classified Senate, will approve all policies and procedures relating to the operation of these Senates.
  - c. The President in consultation with the Provost shall approve all tenure and promotion recommendations.
  - d. The President shall be the signatory on all matters required to be legally specifically approved by the Ohio University Board of Trustees, including development leases involving Ohio University land and bond financing documents.

- e. The President will sign all international academic cooperative agreements and contracts that involve Ohio University; and the President may delegate to the Provost to sign particular international agreements at his/her discretion.
2. The Secretary to the Board.  
The Secretary to the Board will be responsible for certifying all Resolutions of the Board of Trustees as needed, and will be the keeper of the Ohio University seal to be used as needed. The Secretary of the Board will also be responsible for any documents that need to be executed to fulfill the Secretary's obligations pursuant to the By-Laws.
3. The Provost.  
The Provost shall be designated the general contracting officer of Ohio University, and may sign all contracts and other documents not specifically delegated to the other officers of the University. Further, the Provost may make further specific delegations of authority in writing for unique specific projects, such as for documents to be signed on international trips.
4. The Treasurer.  
The Treasurer shall be responsible for signing or specifically delegating authority to sign all contracts and documents related to the financial, investments, accounting and auditing of University's financial affairs.
5. The Vice President for Advancement.  
The Vice President for Advancement may sign all donor and gift agreements and guidelines, and further execute all contracts and agreements involving the Offices of Alumni Affairs, Communication & Marketing, and Development operations.
6. The Vice President for Research.  
The Vice President for Research shall be responsible for signing or specifically delegating authority to sign all federal and state applications for grants; all sponsored research agreements; all grants and reports involving the University's research and research compliance operations; documents related to the University's technology transfer mission; and documents involving the University's airport operations.
7. The Vice President for Finance and Administration.  
The Vice President for Finance and Administration will be responsible for signing all documents that involve leases; economic development programs; labor relations, including matters involving collective bargaining and non-bargaining classified staff; and will be responsible for approving signing authority for the operations of Procurement Services.

8. The Vice President for Student Affairs.  
The Vice President for Student Affairs may sign contracts for University wide events, such as concerts; and may delegate specific signing authority for events such events, the Performance Artist Series, and other programs to the Director of Office University Events; and to the Dean of Students staff for projects involving student activities.
9. The Deans  
The Deans of the respective Colleges, the Dean of the College of Osteopathic Medicine, and the Dean of Alden Library; and the Dean of Lifelong Learning and Deans of the Regional Campuses, (in consultation with the Vice President for Regional Higher Education), may sign approved Affiliation Agreements for student academic experiences, and the Deans may make written offers of employment for faculty and staff appointments, with the proper approval of the Provost's office.
10. The Director of Legal Affairs.  
The Director of Legal Affairs will be authorized to execute all documents requiring certification of legal counsel for the University; and is responsible for executing documents relating to application and maintenance of trademarks and patents, and legal settlement documents, which have been approved by the President and the Ohio Attorney Generals Office. The Office of Legal Affairs will also review and approve all template University contracts, and will review and approve other special contracts and agreements to insure compliance with Ohio law; and may sign documents specifically authorized by the Ohio Attorney Generals Office for construction and other purposes.
11. The Director of Human Resources.  
The Director of Human Resources shall be designated the Ohio University Appointing Authority under Ohio civil service law; and will have the responsibility of determination and signing for all hiring, promotions, transfers, and disciplinary actions, (including removal), involving civil service classified employees.
12. The Director of Athletics.  
The Director of Athletics, in consultation with the head coaches in intercollegiate athletics, and the President when appropriate, may sign game contracts and related contracts and agreements for equipment; promotional marketing, including television and radio marketing agreements for intercollegiate athletics; and may delegate the authority to sign advertising contracts for the Ohio Sports Network (OSN) and other promotional activities.



## Report of the President

President McDavis provided Trustees with a handout outlining his goals for the year 2005-06. The goals stressed the implementation of Vision Ohio, the successful completion of senior level hires, special fundraising, and addressed the issues relating to alcohol abuse. A copy of his presentation is included with the minutes.

Highlights of other presidential remarks included much of the state and national recognition the University was receiving. These included continuing growth of research activity by the faculty, outstanding return on licensing revenue, and patent activity given research funding levels, the importance of completing the Integrated Learning and Research facility to the mission of the institution, the remarkable number of students receiving state and national awards, the high number of "Fulbrights" received against the number of applicants, Fall Ohio Athletics achievements, Fall 2006 preliminary enrollment figures, and FY 2007 budget forecast.

Trustee Kidder asked about the shortfall in international student enrollment and how we were dealing with the visa difficulties. Dr. McDavis reported contacts in Washington were assisting. Chairman Browning ask if the budget shortfall was manageable. Dr. McDavis stated it was.

Dr. McDavis reported the *Columbus Dispatch* did today print his correction to an earlier article stating the University was lowering admission standards. The reporter has admitted poor research and apologized. Dr. McDavis' piece made clear that standards have not been lowered.

## PRESIDENT'S REPORT

### The Ohio University Board of Trustees Meeting

December 14, 2005



## Presidential Goals for 2005-2006

- Implement Vision OHIO
  - Initiate Revision Process for the General Education Program
  - Identify Graduate Programs and Research Areas for Selective Investments
  - Increase Access and Opportunity through Urban and Appalachian Scholars Programs
  - Distribute Publications Nationally to Promote OHIO's Academics and Research Excellence
  - Increase Enrollment of Minority Students and Out-of-State Students
- Complete Senior-Level Administrative Position Searches



- Raise \$10 Million to Build the Integrated Learning and Research Facility which will Strengthen OHIO's Interdisciplinary Research Initiatives
- Promote Personal and Civic Responsibility to All Members of Our Community and Implement Plan to Decrease Alcohol Abuse
- Complete Campus Master Plan



## FY05 Research Reporting

- Faculty, Staff, and Students Submitted a Record High Number of 926 Grant Proposals
- OHIO Received 589 Awards, up from Last Year's 528 Awards With Money Facilitating Research and Programs in Colleges Throughout the University
- OHIO External Funding for Research and Sponsored Programs Exceeded \$57 Million this Year Equaling Highest Amount To Date
- Federal, State, and Private Sponsored Research Funding Accounted for \$29.4 Million of the \$57 Million Total
- Russ College of Engineering and Technology Demonstrated the Highest Increase in Research Activity



## Licensing Revenue and Patent Activity

- *Chronicle of Higher Education* Ranks OHIO 52nd Among 164 Institutions Surveyed for a Report by the Association of University Technology Managers
- OHIO Produced More Than \$2 Million Dollars in Licensing Revenue and Patent Activity in FY04
- Experienced Largest Increase of Revenue from Licensing Revenue and Patent Activity Last Year than any University in the Nation
- OHIO Highest Ranked Public University in the State on the *Chronicle* List



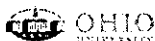
## Integrated Learning and Research Facility

- The \$30 Million Project Launched with \$5 Million Gift from Charles R. Stuckey Jr., and his Wife, Marilyn
- Additional Gifts Include Osteopathic Heritage Foundation Pledge of \$10 Million, \$5 Million from the Russ College, and \$200,000 Anonymous Gift
- Seeking Additional \$10 Million Needed to Fund the Project from Private Donations and the State of Ohio



## National and State Recognition

- Senior Sarah Sexton Named 2006/07 George J. Mitchell Scholar
- The Marching 110 led the Macy's Thanksgiving Day Parade
  - N.B.C. and C.B.S. Broadcasted Parade to More Than 60 Million Viewers
  - More Than 2.5 Million People Watched in Person
- OHIO Students Earned 20 Awards at the 60th Annual College Photographer of the Year Competition
- OU-COM Community Service Programs Faculty and Staff Named "Ohio Heroes" by *Ohio* Magazine

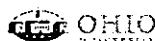


## Fulbright Award Ranking

Research Institution	Number of Awards	Number of Applicants
U. of Michigan, Ann Arbor	26	100
Harvard University	25	99
Yale University	24	99
Columbia University	23	90
U. of California, Berkeley	23	75
Stanford University	19	71
U. of Wisconsin, Madison	18	63
Johns Hopkins University	17	54
Brown University	16	45
Duke University	16	67
Pennsylvania University	16	66
U. of Pennsylvania	16	78
Arizona State University (main campus)	14	39
Northwestern University	14	47
Boston College	13	29
Camel University	12	60
U. of California, Los Angeles	12	60
U. of North Carolina, Chapel Hill	12	45
Northwest College	11	38
George Washington University	11	46
Indiana University, Bloomington	11	60
Tufts University	11	40
New York University	10	55
Georgetown University	9	23
OHIO UNIVERSITY	9	23
Pennsylvania State University, Univ. Park	9	57
U. of Texas, Austin	9	53

## OHIO Athletics Achievements

- OHIO Women's Volleyball Team Won Third Straight Mid-American Conference Regular Season Title and Advanced to the Sweet 16 of the NCAA Tournament
  - Only the Third Team in History of the MAC to go Undefeated in Conference Action in Consecutive Seasons
  - The 37-Home Game Winning Streak is the Nation's Longest
- ESPN.com Dubbed OHIO Men's Basketball Team Season's College Basketball's "It" School
- Black Coaches Association gives University "A" for Head Football Coach Hiring Process



## Appointments/Searches

- Vice President for Finance and Administration
- Vice President for Student Affairs
  - Rich Carpinelli, Interim
- Vice President for University Advancement
  - Molly Tampke, Interim



## Alumni Events/Development Trips

- New York
- Columbus
- Akron, OH
- Zanesville, OH
- Sarasota/Naples, FL



## Public Relations/ Community Relations

- 32 Speaking Engagements
- 19 Press Briefings/Conferences/Media Interviews
- 12 Community Meetings/Events
- 12 Higher Education Council/MAC Meetings/Conference Calls
- 9 Meetings/Calls with Government Officials
- 7 Receptions for Community and Faculty Members and Students



## Fall 2006 Enrollment Update

	Fall 2005 Applied	Fall 2005 Admitted	Fall 2006 Applied	Fall 2006 Admitted	Difference in Applications	Difference in Admits
Total	7,389	4,182	7,787	4,629	438	347
Minority Students	647	181	627	234	96	83
African American Students	338	73	389	117	89	44
Hispanic Students	181	48	142	82	41	16
Asian American Students	102	60	81	48	-12	-7
International Students	13	1	33	1	20	2

## FY07 Preliminary Budget Analysis

- Initial Projection Indicates Budget Shortfall
- Enrollment Projections Show 4,100 First-Year Students Entering in Fall 2006
- FY07 Utility Projection Was Increased Based on Current Information Concerning Rising Gas and Coal Prices
- Continuing to Assume 97% State Share of Instruction (SSI) Guarantee
- Proposed Undergraduate Tuition Increase is 6%
  - 1% of Tuition Increase is Earmarked for Need-Based Scholarships



## **Report of the Provost**

Provost Kathy Krendl began by announcing a recent \$100K grant from the Ford Foundation to assist with expanding diversity discussion and outreach on the campus. She noted Ohio was the only state institution to receive this award.

Provost Krendl provided Trustees with a hard copy of the presentation on the Status of Vision Ohio. Portions of the presentation were given by Professor of Physics and Astronomy David Ingram, Chair, Undergraduate Priorities Implementation Team; and Chair, School of Communications Systems Phyllis Bernt, Co-Chair, Resources Implementation Team. A copy of the power point presentation is included with the minutes

Provost Krendl reviewed time lines and the need for data collection and the establishment of partnerships. Trustee Harris asked the Provost to consider a relationship with the eight urban school systems as a part of this partnership process. Dr. Krendl noted that major budget units were asked to prepare by February 15, 2006 their unit goals and that this would lead more clearly into an overall plan. The requested items are referenced in Stage 1 Goals along with the identification of \$1.5M to assist academic units in funding strategic investments with Vision Ohio goals. She cited the need for strategic investments in areas such as the development of the Gird Lab and increasing out-of-state enrollment in the Honors Tutorial College. She concluded by noting in meeting the goals of national prominence and diversity that the plan must focus on accountability by name and function within planning committees and those responsible for final outcomes.

Professor Ingram spoke on the importance of investment metrics and the charge to members of the Undergraduate Priorities Team. He noted this will begin by reviewing best practices elsewhere, particularly by looking at assessment practices. In Ohio's case, this will initially involve developing a succinct statement distinguishing Ohio University. This process will involve timelines, budgets, etc., and will push all the way down to department levels. The end result of this will be an academic plan measuring Vision Ohio goals against student outcomes prior to and post graduation with the test being a satisfaction measure of student employment performance. Dr. Ingram concluded by noting a planning timeline completion for his team's effort of July 2006 with plan implementation taking more than a year and perhaps as much as four to five years for full implementation.

Provost Krendl noted as a part of the discussion the overall student engagement experience is improving. We do well at the senior level but need more work on the first year learning experience. It is hoped that the attention to and use of the residential learning concept will raise the first year level. Trustee Kidder asked

that the Trustees be given a draft of the aforementioned succinct distinguishing statement at their March 1 and 2, 2006 meetings. Chairman Browning asked about the status of the general education program and was informed that the Faculty Senate had the matter under review. Dr. Browning noted the importance of connecting this to Vision Ohio . Later in the meeting Trustee Rodriguez asked Drs. Ingram and Bernt about the availability and status of the “Tier III” requirement. She was informed that Faculty Senate was working on this. Ms. Rodriguez urged them to move quickly with courses that meet both student and faculty needs. Provost Krendl reported that all seniors will be given the opportunity to schedule needed “Tier III” classes.

Professor Bernt began by describing the University’s current “incremental” budget system and its limitation on matching priorities with resources. She noted the current budgeting process is not helpful when resource allocation changes are contemplated. As Co-Chair of the committee reviewing budget planning, she reported this 20 person committee has been examining models of RCB/RCM to see how these explicitly match resources with priorities. While she stated this would be a University culture change, the opportunity to make better choices as well as control costs makes this review worthwhile. Dr. Bernt focused her specific comments on models being used at the Universities of Indiana and Michigan and reviewed what has actually taken place, their planning data and plans, and critical concerns that may have evolved.

Dr. Bernt described in detail the principles that will guide this proposed budgeting model and the allocation of financial resources to those units generating revenue less some to-be-determined expense. She noted the relationship between academic and academic support units will need to be studied, and while this will cause some concern, the model developed should permit this discussion to be rational.

Dr. Bernt stated that open communication is critical to the success of Vision Ohio and outlined efforts in that regard. The themes of keeping the process simple, having good data and striking the “right” balance between centralized and decentralized resource allocations will be crucial. She stated the timeline for this effort was to have a look at the new process for FY 2007, a shadow system place in FY 2008, and to “go live” in FY 2009.

## Provost's Report

Ohio University  
Board of Trustees Meeting

December 14, 2005



## Vision OHIO Status Report

Final document available January 1  
Implementation teams established  
Implementation reports due June 2006  
Vision OHIO implemented Fall 2006



## Stage I Goals

- Establish Partnership Office
- Establish Graduate & Research Selective investments
- Establish Disciplinary Enrollment Targets
- Establish Performance Metrics for all units



## Stage I Goals

Vision Ohio Planning Requirements

- Tuition, Fees, Financial Aid Plan
- Compensation Plan
- Faculty and Staff Plan
- Information Technology Plan
- AQIP Plan



## Stage 1 Goals

- Released \$1.5 million to academic units
- Strategic investments
- Vision OHIO goals
  - National Prominence
  - Diversity
  - Resources
  - Partnerships



## Strategic Investments Examples

### National Prominence

Targeted recruitment of out-of-state HTC students  
Interactive Digital Media Initiatives – GRID Lab and @ Lab

### Diversity—in STEM areas

Targeted recruitment of middle school and under-represented students  
Targeted recruitment of HBCU & international students

### Resources

On-line course/CEU development  
Enhanced first-year experience

### Partnerships

Comprehensive P-12 collaborations  
Expansion of BBA degree to regional campuses



## Strategic Investment Metrics

- National Prominence
  - Increased out-of-state enrollment and enhanced student profile in HTC
  - Increases in research funding and national visibility in interactive digital media
- Diversity
  - Increased enrollment of multicultural students at undergraduate and graduate levels in STEM areas



## Strategic Investment Metrics

- Resources
  - Increased enrollments in credit and non-credit courses for graduate and professional programs in HHIS
  - Improvements in freshman to sophomore retention
- Partnerships
  - Enhanced Athens enrollments of students from region
  - Increases in enrollments at regional campuses



## Implementation Team Updates

- David Ingram, Chair, Undergraduate Priorities Implementation Team
- Phyllis Bernt, Co-Chair, Resources Implementation Team



## Undergraduate Priorities Team Charges

- A summary of “Best Practice” at our peer institutions.
- A succinct statement distinguishing Ohio University.
- Timelines, budgets, and identification of accountability for Undergraduate Education Goals at Ohio University.
- Methods for integration of the evaluation of the achievement of the goals into the reviewing process of University Curriculum Council.

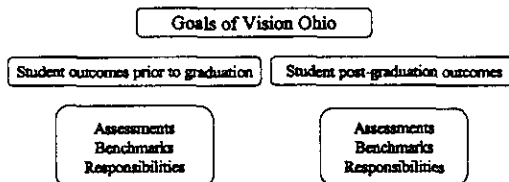


## Best Practice

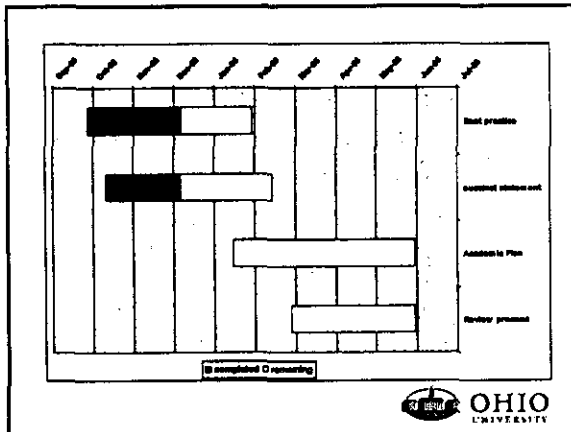
- University of New Hampshire
- Indiana University, Bloomington
- University of North Carolina, Chapel Hill
- University of Connecticut
- University of Missouri, Columbia
- Clemson University
- University of Delaware
- University of Tennessee
- Washington State University
- Auburn University
- Indiana University : Purdue University, Indianapolis.
- University of Michigan
- Ohio State University



## An Academic Plan for Undergraduate Education at Ohio University







## Why RCB/RCM?

- Match resources with priorities
- Get a better handle on costs
- Provide the ability to do rational cost/benefit analyses
- Push decision making, responsibility and accountability down to the appropriate level



## Team Charge

- Review goals and metrics
- Review best practices
- Provide oversight and guidance
- Communicate
- Identify interest groups
- Identify groups responsible
- Host focus groups and open forum discussions
- Develop a prioritized budget
- Establish the timelines



## Membership

- 20 committee members including faculty, students, deans, associate deans, administrators, classified staff
  - Co-chairs: Terry Conry (Director of Facilities and Auxiliaries) & Phyllis Bernt (College of Communication Faculty)
- 4 resource members



## Team Subcommittees

- Best practices
- Communication (Margaret Sheskey)
- Budget Structure
  - Revenue (David Thomas)
  - Cost (Steve Flaherty)
- Support Group (John Day)



## Guiding Principles

- The budget allocation process must support the academic plan, and therefore must be focused on quality.
- The process must be transparent to all members of the campus community, and must require accountability.
- The process must be easy to administer, and not costly to maintain.
- The process must reflect the principles of shared governance.
- The process must balance the redirection of funds for new initiatives with the goal of providing sufficient funds for ongoing efforts, and must provide budget stability.



## What we've done so far

- Researching best practices
  - Indiana University (Ed Whalen visit)
  - Ohio State (teleconference with Lee Walker)
  - New Hampshire (teleconference with David Proulx)
  - Michigan (teleconference scheduled with Phil Hanlon)
  - Lots of reading
    - Minnesota, Pennsylvania, UCLA, and more
- Modeling of FY'05 and FY'06 financials
  - Measuring impacts of "what if" scenarios



## Emerging themes

- RCB/RCM continuum
  - Detailed allocation of all dollars (Indiana)
  - Flat-rate percentages (Michigan)
- Keep it simple
- Develop good data
- Strike the right balance between decentralizing resources and generating a central pool
  - Minimize perverse incentives
  - Support the common good
  - Recognize that not all areas will be able to pay their own way
- COMMUNICATION IS CRUCIAL



## Communication Efforts

- Memo from the President and Provost
- Informational email to be sent at the beginning of winter quarter
- Open forums scheduled:
  - December 20
  - January 11
  - January 25
- Ongoing information to be provided to the University community



## Timeline

- This year (2005-06):
  - Fall quarter, winter break, beginning of winter quarter: research
  - Winter quarter and beginning of spring quarter: policy and procedure formulation
  - Spring quarter and summer: implementation
- Second year (2006-07)
  - Run parallel budgets
- Third year (2007-08)
  - Go live with the new budget system



University Legal Counsel John F. Burns presented and discussed this resolution. He described the need to reaffirm the lease agreement with National Church Residencies (NCR). Mr. Burns acknowledged the process that the proposed project was undergoing with Athens City Council and various aspects of the community. He noted both support and opposition to the project, including a letter from Rosalyn Semelsberger, President, Health Care Industries Corporation, requesting that the Trustees take no action.

Trustees asked, and were reassured, that NCR could meet development and operating expectations and that University interests were also met.

Trustee Schey then moved approval of the resolution. Mr. DeLawder seconded the motion, and all voted yes.

## **LAND LEASE AGREEMENT WITH CONTINUING CARE RETIREMENT COMMUNITY**

### **RESOLUTION 2005 - 2020**

**WHEREAS**, Ohio University owns a 16.09 acre site on Stimson Avenue in Athens, Ohio that has been identified as an optimal location for a retirement community.

**WHEREAS**, a local association called the Continuing Care Retirement Community (CCRC) For Athens, in conjunction with National Church Residences (NCR) has proposed a plan for the construction of a retirement center that is consistent with University needs and will comport with architectural design requirements.

**WHEREAS**, the Ohio University Board of Trustees properly adopted resolution 2004-1945 on June 25, 2004, which required the University to enter into a lease agreement with the developer within one year of the resolution.

**WHEREAS**, the plan for the retirement community is a Planned Unit Development (PUD) under the Athens land use ordinances; and the process for approval of the PUD, although initiated in the summer of 2004, has taken more than one year to work through and gain approval due to several factors, including complexities of the design, plan replication, study and reduction, neighborhood and

board opposition, and community use considerations for the site. What is the reference to reduction? What board opposition?

**WHEREAS**, the first of three readings of the City of Athens Ordinance before the Athens City Council was heard November 21, 2005, and the third and final reading is scheduled for December 19, 2005; and the Athens City Director of Law has opined that the Ohio University Board of Trustees does not need to have an executed lease with the CCRC For Athens and NCR before final approval of this PUD can be given by the Athens City Council.

**WHEREAS**, the Ohio University Board of Trustees continues to believe that the development of the retirement community will be a significant benefit to Ohio University, the Athens community and the region.

**NOW THEREFORE BE IT RESOLVED**, that the Ohio University Board of Trustees hereby declares the 16.09 acre site to be surplus property in accordance with Ohio Revised Code Section 123.77; and, in accordance with Ohio law, hereby authorizes the leasing of this property for up to eighty (80) years to a legal entity created by the CCRC For Athens and NCR, for one (\$1.00) dollar per year, with the condition that a lease must be signed within one year from the date of this resolution, reconfirming the authorization of the Ohio University Board of Trustees.

**BE IT FURTHER RESOLVED**, that the President of Ohio University is hereby authorized to give final approval to the terms and conditions of a lease, and to authorize his designee to arrange execution of the lease in accordance with Ohio law.



**OHIO**  
UNIVERSITY  
Legal Affairs

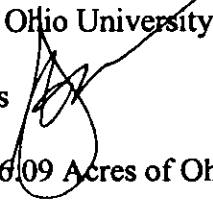
## Interoffice Communication

Wilcher House  
100 E. Union Street  
Athens OH 45701-2979

Phone: 740.593.2626  
Fax: 740.593.0200

December 1, 2005

To: The President and Board of Trustees of Ohio University

From: John F. Burns, Director of Legal Affairs 

Re: Reconfirmation of Approval to Lease 16.09 Acres of Ohio University Property for a Retirement Center

At the June 2004 board meeting the board passed Resolution 2004-1945 to approve the lease of a site on Stimson Avenue in Athens for a new retirement center to benefit the Ohio University, Athens, and the regional communities.

The approval called for a long-term lease under Ohio Law for one dollar (\$1.00) per year, and a condition was placed on the approval that the lease be entered into within one year. As a further condition, construction of the facility must commence within one year of the date of execution of lease as required by Ohio Law.

Both the Continuing Care Retirement Community (CCRC) For Athens and National Church Residences (NCR) began almost immediately to do the required site review and design work, and to start the City of Athens land use approval process. As part of this review a determination was made that the most appropriate City of Athens land use approval for this site would be a Planned Unit Development (PUD). The approval process for a PUD highlighted potential flood plain issues, vacation of a City of Athens roadway right of way, and involved some local neighborhood opposition. Responding to all the concerns has taken longer than the one year time period.

The University staff has been working closely with the City of Athens officials, including the Mayor, City Service Director, and the Director of Code Enforcement; and the staff has worked with the CCRC for Athens and NCR to seek approval of the PUD for the retirement center for almost eighteen (18) months. At this point it is our judgment the Athens City Council is very close to having a majority vote for approval of the PUD after a great deal of discussion, debate, negotiations, and a series of use conditions approved by the Athens City Director of Law, Garry E. Hunter. We also waited to bring the matter before the Ohio University Board of Trustees again to extend the lease period

to ensure we had clarification from the Director of Law as to whether a reconfirmation of the previous resolution would be required, and his November 8, 2005 letter is attached requiring such action. We also wanted such to ensure there was a majority of the Athens City Council in favor of approval of this project. The Director of Law is also dealing with a recent conflict of interest complaint to the Ohio Ethics Commission from a neighborhood resident regarding the fact certain Athens City Council members are employees of the University and one is a current student.

Additionally, the lease will include a revocable license for one acre of land to be granted to the University by the City of Athens regarding the roadway right of way. This will be a separate ordinance that is before the Athens City Council, and which is expected to be approved at the same time that the PUD Ordinance is approved, which are both currently scheduled for final approval on December 19, 2005. We should know whether this schedule will remain in place by the board meeting.

A new resolution to reconfirm the Ohio University Board of Trustees approval of the surveyed 16.09 acre site for the retirement center is attached for your review and consideration at the board meeting. Also attached is a letter I requested from NCR to reconfirm that the provision of the site and cost of the lease was and remains critical to their participation as the developer; and that their consideration of the land contribution results in a projected 3-5% reduction of rental costs to future residents of the facility. Also, attached is an email from Gary S. Neiman Ph.D., Dean of the College of Health and Human Services, discussing the cooperative synergies between the University, his college, and NCR for educational programs at the planned facility.

Thank you very much. The staff will be available at the board meeting to review these development and request with you.

Attachments

Cc: Dr. Alan H. Geiger, Secretary to the Ohio University Board of Trustees

OFFICES OF THE  
DIRECTOR OF LAW  
and  
CITY PROSECUTORS  
SUITE 301  
LAW ADMINISTRATION BLDG.  
ATHENS, OHIO 45701-2411  
TELEPHONE 740/592-3332  
TELECOPIER 740/592-3350



*City of Athens*  
ATHENS, OHIO

GARRY E. HUNTER  
DIRECTOR OF LAW

November 8, 2005

John F. Burns, Esq.  
Director, Legal Affairs Office  
Pilcher House  
Ohio University  
Athens, Ohio 45701

Re: National Church Residences Property Development on  
Stimson Avenue

Dear John:

As you are aware, during the October 31, 2005 meeting with City Council, I advised Council that they needed to at least have the OU Board of Trustees renew their Resolution to enter into a lease agreement with National Church Residences for the project on Stimson Avenue prior to the ordinance approving this PUD being adopted.

Jim Sands has asked that I notify you that this ordinance will be introduced sometime in November, 2005, but that it will not be adopted until the OU Board of Trustees Resolution authorizing the lease agreement with National Church Residences is renewed.

Under Ohio Law, if the ordinance is not adopted by December 31, 2005, it will need to be introduced in 2006 as a new ordinance. There will be a new make-up of City Council for 2006, therefore, the votes may change for support of this ordinance.

Respectfully,

Garry E. Hunter  
Director of Law



# National Church Residences

2335 NORTH BANK DRIVE, COLUMBUS, OHIO 43220-5499

(614) 451-2151 FAX (614) 451-0351 TDD (800) 925-8689 [www.ncr.org](http://www.ncr.org)

John F. Burns, Esq.  
Ohio University – Director of Legal Affairs  
Pilcher House  
10 E Union Street  
Athens OH 45701-2979

Dear John:

As per your request, let me summarize the critical nature of the University's contribution of the land to the CCRC development.

As we have discussed previously, National Church Residences (NCR) would not be interested in proceeding with the development without this important contribution. More specifically, I offer the following:

1. Proximity to Ohio University

During the planning stage, we determined that it is essential that the CCRC be located in close proximity to Ohio University to take advantage of the university affiliation for marketing as well as programming. The location of the project close to Ohio University has been absolutely essential to our planning process.

2. Pre-development Costs and Risk

One of the most important aspects of Ohio University's contribution of the land was to reduce the significant holding cost and therefore, the risk related to developing this project. We have been working with the CCRC committee for almost two years. The committee itself has been working on the project for a considerably longer period of time. During this time period, NCR has invested thousands of dollars in pre-development costs. Buying and holding land during this time period was considered unfeasible by our Board of Trustees. Therefore, the contribution of the Ohio University's land during the pre-development process was essential to our determination of feasibility.

3. Financing for the Project

Ohio University's contribution of the land is vital for financing this project. We are planning to finance this project with tax exempt bonds. The contribution of Ohio University land will make the project a more acceptable risk to the bond holders.



4. Development Costs

Finally, we are estimating total development costs for this project to be over \$15,000,000, and the university's contribution will allow NCR to reduce the costs of the CCRC by approximately 3 - 5%. We are expecting to be able to pass this reduction in cost along to residents in the form of lower rents thus opening the effective market to more individuals.

We are grateful for Ohio University's land contribution to the CCRC development. It has been critical to the development process and will result in a feasible project at lower rents to the residents.

Sincerely,



Thomas Slemmer  
President & CEO

Cc: President Roderick J. McDavis  
Dr. Alan H. Geiger, Secretary to The Ohio University Board of Trustees

X-Sieve: CMU Sieve 2.2

Date: Mon, 28 Nov 2005 13:59:50 -0500

From: Gary Neiman <neiman@ohio.edu>

To: burns@ohio.edu

cc: Kathy Krendl <krendl@ohio.edu>

Subject: CCRC

X-Mailer: Mulberry/3.1.5 (Win32)

X-PMX-Version: 4.7.0.111621, Antispam-Engine: 2.0.2.0, Antispam-Data: 2005.11.28.20 (pm2)

X-PMX-Information: <http://www.cns.ohiou.edu/email/filtering/>

X-PMX-Spam: Gauge=IIIIII, Probability=7%, Report='\_\_C230066\_P5 0, \_\_CD 0, \_\_CT 0, \_\_CTE 0, \_\_CT\_TEXT\_PLAIN 0, \_\_FRAUD\_419\_BADTHINGS 0, \_\_HAS\_MSGID 0, \_\_HAS\_X\_MAILER 0, \_\_MIME\_TEXT\_ONLY 0, \_\_MIME\_VERSION 0, \_\_SANE\_MSGID 0'

Dear John:

At your request for the information of our Board of Trustees, I wish to detail some of the potential synergies between the University (specifically, the College of Health and Human Services) and the Continuing Care Retirement Community of Athens. Many of our academic programs involve treatment of chronic disease in older adults, leisure and recreational needs of older adults, health needs of older adults, administration of facilities for older adults, etc. In addition, several of our faculty are actively pursuing lines of research requiring older adult populations, and access to this facility would offer opportunities for research studies involving elderly patients and health care. This type of facility would offer an opportunity for students in several areas to gain experience working hands-on with elderly individuals. It would also offer the opportunity for students to provide community service through their work with the elderly. Clearly, it is in the interests of our College (and the University) to be closely aligned with any facility in which large numbers of older adults reside.

Examples of curricular and programmatic overlap are as follows:

Health administration (including long term care)

Speech/Language pathology

Psychology

Physical therapy

Recreational therapy

Exercise Physiology (including cardiac rehabilitation and adult fitness)

Gerontology (graduate and undergraduate)

Nutrition

Community Health

Nursing

Family Studies

Interior Architecture

Other areas of overlap within the University include medicine, clinical and social psychology, education, and social work. Synergies are also possible with our Division of Campus Recreation (recreational programming), Lifelong Learning (Elder Hostel and other programming), Library, Computer Services, Special Events, etc.

Please let me know if you need additional information.

Gary

Gary S. Neiman, Ph.D.

Dean

College of Health and Human Services

Ohio University

W381 Grover Center

Athens, Ohio 45701

740.593.9336 (phone)

740.597.1280 (fax)

740.517.3550 (cell)

Trustee DeLawder presented the resolution by recalling an earlier meeting (November 23, 2005) of the Audit, Finance, Facilities, and Investment Committee which met following the October 13 Trustees meeting. The Committee reviewed a series of financial data dealing with matters of capital needs, bond ratings, and housing requirements. A copy of those minutes was included in the agenda materials for the December 14 meeting. He stated his committee supports the resolution authorizing the sale of bonds.

Trustees expressed some concern about the University's debt limit but seemed to resolve that there was still flexibility and the danger limit has not been met. It was noted that in examining debt the source of repayment effects how differently one might feel. It was agreed that the amount of debt and the debt policy should be reviewed annually. Dr. McDavis noted his understanding and agreement with the direction of the discussion and that capital and future needs might need to be modified, postponed, or alternative funding sources sought.

On a motion by Mr. DeLawder and a second by Mr. Kidder the motion was unanimously approved.

Following the vote, Trustee Kidder again asked that the institution explore collaborative arrangements with others as we go forward to develop a student information system. Provost Krendl responded we will do this given opportunities that exist now and in the future.

#### **RESOLUTION 2005 - 2021**

Providing for the authorization, issuance and sale of not to exceed \$38,000,000 Subordinated General Receipts Bonds of The Ohio University, authorizing a Supplemental Trust Agreement securing such bonds, and authorizing matters related thereto

WHEREAS, The Ohio University (herein called the "University"), a state university of the State of Ohio created and existing under Chapter 3337 of the Ohio Revised Code, by Resolution No. 2000-1744 adopted by its Board of Trustees (herein called the "Board") on December 8, 2000 (herein called the "General Bond Resolution") and by a Trust Agreement dated May 1, 2001 (together with amendments and supplements thereto, the "Trust Agreement"), comprised in part of the General Bond Resolution, has provided for the issuance from time to time of Obligations (as defined in the General Bond Resolution) of the University, each

such issue to be authorized by a Series Resolution adopted by the Board pursuant to the Trust Agreement; and

WHEREAS, the General Bond Resolution was adopted and the Trust Agreement was authorized by the Board pursuant to Sections 3345.11 and 3345.12 of the Ohio Revised Code, enacted by the General Assembly of Ohio under authority of the Constitution of Ohio, particularly Section 2i of Article VIII thereof, which authorizes the University to issue its Obligations from time to time to pay costs of certain capital facilities, defined as “auxiliary facilities” or “education facilities” in Section 3345.12 of the Ohio Revised Code and called “University Facilities” in the General Bond Resolution and in this Series Resolution, and to refund, fund or retire such Obligations or other obligations previously issued for such purpose; and

WHEREAS, the University has heretofore issued its \$48,025,000 principal amount of Bonds (as defined in the General Bond Resolution) under the Trust Agreement designated “Subordinated Variable Rate General Receipts Bonds, Series 2001” dated May 3, 2001 and maturing December 1, 2026 (the “Series 2001 Bonds”), pursuant to a First Supplemental Trust Agreement dated as of May 1, 2001 (the “First Supplemental Trust Agreement”) for the purpose of paying part of the cost of certain University Facilities; and

WHEREAS, the University has heretofore entered into an Interest Rate Hedge (as defined in Section 9.98 of the Ohio Revised Code) for a portion of the Series 2001 Bonds in the form of an ISDA Master Agreement, dated December 1, 2001 (which, together with the schedule and confirmations related thereto, are collectively referred to as the “Series 2001 Swap Agreement”) in a maximum notional amount of \$31,020,000 with Morgan Guaranty Trust Company of New York, under the Trust Agreement with respect to amounts payable by the University under the Series 2001 Swap Agreement (other than any Early Termination Amount, as defined in the Series 2001 Swap Agreement, and any amounts payable pursuant to Section 11 of the Series 2001 Swap Agreement by the University); and

WHEREAS, the University has heretofore issued under such Trust Agreement its \$47,860,000 principal amount of Bonds designated “Subordinated General Receipts Bonds, Series 2003” dated September 3, 2003 and maturing through December 1, 2023 (the “Series 2003 Bonds”), pursuant to a Second Supplemental Trust Agreement dated as of September 1, 2003 (the “Second Supplemental Trust Agreement”) for the purpose of retiring the University’s Subordinated General Receipts Bond Anticipation Notes, Series 2003 and refunding the University’s General Receipts Bonds, Series 1993 dated as of December 1, 1993, which were issued to finance the cost of certain University Facilities ; and

WHEREAS, pursuant to such Trust Agreement, the University has issued and may issue Notes (as defined in the General Bond Resolution) pursuant to a Third Supplemental Trust Agreement dated as of October 1, 2003 (the "Third Supplemental Trust Agreement") for the purpose of paying part of the cost of certain University Facilities; however, there are no Notes presently outstanding under the Third Supplemental Trust Agreement; and

WHEREAS, the University has heretofore issued under such Trust Agreement its \$52,885,000 principal amount of Bonds designated "Subordinated General Receipts Bonds, Series 2004" dated as of March 15, 2004 and maturing through December 1, 2031 (the "Series 2004 Bonds"), pursuant to a Fourth Supplemental Trust Agreement dated as of March 15, 2004 (the "Fourth Supplemental Trust Agreement") for the purpose of paying part of the cost of certain University Facilities; and

WHEREAS, the University has heretofore authorized the issuance under such Trust Agreement of not to exceed \$29,000,000 principal amount of Bonds tentatively designated "Subordinated General Receipts Refunding Bonds, Series 2005" maturing not later than December 1, 2024 (the "Series 2005 Bonds"), pursuant to a Supplemental Trust Agreement (the "Series 2005 Supplemental Trust Agreement") for the purpose of refunding all or a portion of the University's outstanding General Receipts Bonds, Series 1999 dated as of March 15, 1999 issued pursuant to the Prior Indenture, as defined in the General Bond Resolution, for the purpose of paying part of the cost of certain University Facilities; and

WHEREAS, the University has heretofore issued its \$7,650,000 principal amount of bond anticipation notes designated "General Receipts Bond Anticipation Notes, Series 2005" dated January 20, 2005 and maturing January 19, 2006 (together with any bond anticipation notes issued to renew such notes, the "Series 2005 Notes") for the purpose of paying part of the costs of administrative systems constituting University Facilities; and

WHEREAS, the University has previously determined, and does hereby confirm, that it is necessary to acquire, construct, equip, furnish, reconstruct, alter, enlarge, remodel, renovate, rehabilitate or improve the following University Facilities at the respective currently estimated costs (being collectively referred to herein as the "2006 Projects"):

<u>Project Name</u>	<u>Description</u>	Currently <b>Estimated Cost</b>
Residence Hall	Construction of a 350-bed residence hall near Nelson Commons on South Green.	\$22,000,000
Student Information System	Development of a Student Information System (SIS) that supports several critical university business functions, including course registration, housing, grades and transcripts, admissions, and student accounts.	\$4,000,000
University Center	Interim financing for audio visual equipment and furniture. In the long term, State capital funds should be available to retire this interim debt.	\$5,210,000
Performance Contract	The Energy Performance Contract includes an addition to the control room, final conversion of control systems, and refurbishing of coal and ash handling systems at the Lausche Heating Plant.	\$3,300,000
College of Communication Building	Design costs for the renovation or demolition and re-construction of the Baker Center facility for the College of Communication.	\$2,400,000
Integrated Learning and Research Facility	Design costs for the Integrated Learning and Research Facility, which may have a project budget of \$30 million.	\$300,000

; and

WHEREAS, the University has determined to issue not to exceed \$38,000,000 principal amount of Bonds under the Trust Agreement, to be designated "Subordinated General Receipts Bonds, Series 2006", or such other designation as authorized hereby (the "Series 2006 Bonds"), to refund the Series 2005 Notes and finance part of the costs of the 2006 Projects, and desires to provide therefor by this Resolution; and

WHEREAS, the Board finds that all conditions precedent to the authorization and sale of the Series 2006 Bonds have been or will be met by the time the Series 2006 Bonds are issued;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE OHIO UNIVERSITY, as follows:

Section 1. Definitions and Interpretations. All words and terms defined in the General Bond Resolution and elsewhere in the Trust Agreement and all interpretations therein provided shall have the meanings, respectively, and be subject to the same interpretations as therein provided where used in this Resolution, unless the context or use indicates another or different meaning or intent, except that this Resolution is sometimes herein called and may be known as the "Series 2006 Resolution", the Bonds authorized by this Resolution are referred to herein and in the Series 2006 Supplemental Trust Agreement hereby authorized as the "Series 2006 Bonds", and the terms "hereof", "herein", "hereby", "hereto" and "hereunder", and similar terms, mean this Resolution. All words and terms defined in the preambles hereto shall have the respective meanings provided in the preambles hereto.

In addition, when used in this Resolution and the Series 2006 Supplemental Trust Agreement hereby authorized, the following words shall have the indicated meanings:

"Authorized Denominations" means with respect to the Series 2006 Bonds, the denominations designated as such in the Series 2006 Certificate of Award.

"Beneficial Owner" means with respect to the Series 2006 Bonds, the Person owning the Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

"Beneficial Ownership Interest" means the right to receive payments and notices with respect to the Series 2006 Bonds held in a book entry system for which the Depository does not act on behalf of a Beneficial Owner with respect to the optional or mandatory tender for purchase of the Series 2006 Bonds pursuant to the Trust Agreement.

"Book entry form" or "book entry system" means, with respect to the Series 2006 Bonds, a form or system, as applicable, under which (i) the ownership of beneficial interests in such Bonds and Debt Service Charges may be transferred only through a book entry and (ii) physical Series 2006 Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Bondholder, with the physical Series 2006 Bond certificates "immobilized" in the

custody of the Depository. The book entry system maintained by and the responsibility of the Depository and not maintained by or the responsibility of the University or the Trustee is the record that identifies, and records the transfer of the interests of, the owners of beneficial (book entry) interests in such Series 2006 Bonds.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book entry system to record ownership of beneficial interest in the Series 2006 Bonds, and to effect transfers of book entry interests in such Bonds, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Fixed Rate Bonds” means Series 2006 Bonds that are not “Variable Rate Obligations”, as defined in the General Bond Resolution.

“Interest Payment Date” means, as to the Series 2006 Bonds, each of the dates set forth as such in the Series 2006 Certificate of Award.

“Interest Rate Hedge” means an “interest rate hedge” as defined in Section 9.98 of the Ohio Revised Code.

“Interest Rate Mode” means any of those modes of interest with respect to the Series 2006 Bonds permitted by the Series 2006 Supplemental Trust Agreement and specified in the Series 2006 Certificate of Award.

“Mandatory Redemption Date” means, as to the Series 2006 Bonds, each of the dates set forth in the Series 2006 Certificate of Award for the retirement of a portion of the principal of the Series 2006 Bonds pursuant to any Mandatory Sinking Fund Requirements set forth therein.

“Mandatory Sinking Fund Requirements” means, as to the Series 2006 Bonds, the amounts required to be deposited in the Debt Service Fund for the purpose of redeeming Series 2006 Bonds (less the amount of any credit as provided in Section 4(c) of this Resolution) on each Mandatory Redemption Date, as may be set forth in the Series 2006 Certificate of Award.

“Maximum Rate” means twelve percent (12%) per annum or such lesser rate designated as such in the Series 2006 Certificate of Award.

“Memorandum of Instructions” means the Memorandum of Instructions Regarding Use of Proceeds, Investment Limitations and Rebate Requirements delivered to the University and the Trustee at the time of the issuance and delivery of



the Series 2006 Bonds, as the same may be amended or supplemented in accordance with its terms.

“Original Purchaser” means, as to the Series 2006 Bonds, the purchaser or purchasers of the Series 2006 Bonds designated as such in the Series 2006 Certificate of Award.

“Pledged Bonds” means Series 2006 Bonds or Beneficial Ownership Interests registered in the name of the Series 2006 Financial Institution and securing the obligations of the University to reimburse the Series 2006 Financial Institution for advances made pursuant to the Series 2006 Credit Support Instrument as may be provided in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

“Prior Obligations” means the Series 2001 Bonds, Series 2001 Swap Agreement, the Series 2003 Bonds, the Notes heretofore issued, the Series 2004 Bonds, and the Series 2005 Bonds.

“Rebate Fund” means the fund by that name referred to in Section 10 hereof.

“Series 2006 Certificate of Award” means the certificate of the Fiscal Officer establishing certain terms of the Series 2006 Bonds and authorized in Section 5 hereof.

“Series 2006 Closing Date” means the date on which the Series 2006 Bonds are delivered to the Original Purchaser for payment.

“Series 2006 Credit Support Instrument” means any Credit Support Instruments relating to the Series 2006 Bonds described in the Series 2006 Certificate of Award and issued by the Series 2006 Financial Institution for the benefit of the holders of the Series 2006 Bonds.

“Series 2006 Financial Institution” means the Financial Institution issuing the Series 2006 Credit Support Instrument described in the Series 2006 Certificate of Award.

“Series 2006 Projects Account” means the account by that name created in the Facilities Fund pursuant to Section 6 hereof.

“Series 2006 Remarketing Agent” means the Remarketing Agent designated as such in the Series 2006 Certificate of Award.

“Series 2006 Supplemental Trust Agreement” means the Supplemental Trust Agreement styled and dated as determined in the Series 2006 Certificate of Award,

by and between the University and the Trustee supplementing the Trust Agreement and securing the Series 2006 Bonds, as the same may be amended as provided therein.

“Taxable Series 2006 Bonds” means any Series 2006 Bonds other than Tax-Exempt Series 2006 Bonds.

“Tax-Exempt Series 2006 Bonds” means Series 2006 Bonds the interest on which is intended by the University at the time of initial issuance, to be exempt from federal income taxation under the Code, such intent to be conclusively evidenced by a determination to that effect contained in the Series 2006 Certificate of Award.

Section 2. Determinations by Board. The Board hereby finds and determines that (a) each of the 2006 Projects will constitute “auxiliary facilities” or “education facilities” as defined in the Act; (b) the issuance of the Series 2006 Bonds and the refunding of the Series 2005 Notes will be in the best interests of the University; and (c) this Resolution is adopted pursuant to the General Bond Resolution, the Trust Agreement, the Act and Section 2i of Article VIII of the Ohio Constitution.

The Board finds that the conditions stated in numbered subparagraphs (1) and (2) of Section 3(a) of the General Bond Resolution will be satisfied by the time of authentication of the Series 2006 Bonds. The Fiscal Officer shall confirm these findings by a certificate in form satisfactory to, and to be filed with, the Trustee prior to the authentication of the Series 2006 Bonds, and the Fiscal Officer may provide such other evidence with respect thereto as the Trustee may reasonably request.

Section 3. Authorization, Designation and Purpose of Series 2006 Bonds. It is hereby declared to be necessary and in the best interests of the University to, and the University shall, issue, sell and deliver, as provided and authorized herein not to exceed \$38,000,000 principal amount of Bonds of the University, on a parity with all other outstanding Obligations from time to time, which shall be designated “Subordinated General Receipts Bonds, Series 2006”, or such other designation as may be specified in the Series 2006 Certificate of Award (the “Series 2006 Bonds”), for the purposes of (i) refunding the Series 2005 Notes, and (ii) paying Costs of University Facilities, as defined in the General Bond Resolution, related to the 2006 Projects and the Series 2006 Bonds upon the terms set forth herein. For such purposes, the proceeds from the sale of the Series 2006 Bonds shall be allocated and deposited as provided in Section 6 hereof. Proceeds of the Series 2006 Bonds may be allocated among the 2006 Projects other than as shown in the preambles to this Resolution (even if doing so results in a reduction or elimination of one or more of the Series 2006 Projects), and deviations from the descriptions of particular Series 2006 Projects as shown in the preambles to this Resolution may be made, if the

Fiscal Officer determines that doing so is in the best interest of the University. The principal amount of the Series 2006 Bonds to be issued shall be determined by the Fiscal Officer and specified in the Series 2006 Certificate of Award. The Series 2006 Bonds may be issued in one or more separate series of (i) Fixed Rate Bonds, or (ii) Variable Rate Obligations bearing interest at one or more Interest Rate Modes, and any such Variable Rate Obligations may be convertible to one or more Interest Rate Modes, all as the Fiscal Officer may determine in the Series 2006 Certificate of Award and as described herein and in the Series 2006 Supplemental Trust Agreement. The Series 2006 Bonds may be issued in separate series of Tax-Exempt Series 2006 Bonds and Taxable Series 2006 Bonds as the Fiscal Officer may determine in the Series 2006 Certificate of Award.

#### Section 4. Terms and Provisions Applicable to the Series 2006 Bonds.

(a) Forms, Denominations, Dates and Numbering. The Series 2006 Bonds shall be negotiable instruments in accordance with the Act, shall be issued only in fully registered form, without coupons, shall be substantially in the respective forms thereof set forth in the Series 2006 Supplemental Trust Agreement, shall be in Authorized Denominations and shall express upon their faces the purpose for which they are issued and that they are issued pursuant to the Act. Each Series 2006 Bond shall have only one principal maturity date, except for interim certificates, receipts or temporary Series 2006 Bonds which may be issued pending preparation of definitive Series 2006 Bonds. The Series 2006 Bonds shall be dated and numbered as set forth in the Series 2006 Certificate of Award.

Subject to the provisions of this Resolution for the use of a book entry system, the Series 2006 Bonds shall be exchangeable for other Series 2006 Bonds in the manner and upon the terms set forth in the Trust Agreement.

(b) Execution, Interest Rates and Maturities. (i) The Series 2006 Bonds shall be executed by the Chairman of the Board or the President of the University and by the Fiscal Officer or the Secretary of the Board and may have the seal of the University affixed or printed thereon; provided that all of such signatures and such seal may be facsimiles.

(ii) The Series 2006 Bonds shall mature on the date or dates and in the amounts set forth in the Series 2006 Certificate of Award, provided that the final maturity of the Series 2006 Bonds shall be not later than December 1, 2036. Interest on the Series 2006 Bonds shall be calculated and payable as provided in the Series 2006 Certificate of Award. The interest rate payable by the University on the Series 2006 Bonds shall not exceed the Maximum Rate except that Pledged Bonds (or the economic equivalent thereof as may be determined in the Series 2006 Certificate of Award) may bear interest at a rate greater than the Maximum Rate as

provided in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

(iii) At the University's option, some or all of the Series 2006 Bonds may be converted to or from one Interest Rate Mode to another as provided in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

(c) Mandatory Sinking Fund Redemption. The Series 2006 Bonds shall be subject to mandatory sinking fund redemption in part on each Mandatory Redemption Date, in the manner provided in the Trust Agreement, at a redemption price of 100% of the principal amount thereof to be redeemed plus accrued interest to the redemption date in such amounts and in the manner as may be set forth in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

(d) Optional Redemption. The Series 2006 Bonds shall be callable for redemption at the option of the University, in the manner provided in the Trust Agreement, in whole or in part, at such price or prices (but in any case not greater than 103% of the principal amount of Series 2006 Bonds to be redeemed plus accrued interest to the redemption date) at such times and in the manner as may be set forth in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

(e) Method and Notice of Redemption. If less than all of the outstanding Series 2006 Bonds of one maturity are to be called, the selection of such Series 2006 Bonds of such maturity to be called shall be made in the manner provided in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement. Notice of call for redemption of Series 2006 Bonds shall be given at the times and in the manner provided in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

(f) Place of Payment; Record Dates. Debt Service Charges on the Series 2006 Bonds when due shall be payable to the registered holders thereof at the places and in the manner provided in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement. The Fiscal Officer may establish a Regular Record Date and a Special Record Date for the Series 2006 Bonds which shall be set forth in the Series 2006 Certificate of Award.

(g) Paying Agent and Registrar. The Trustee shall serve as Paying Agent and Registrar for the Series 2006 Bonds.

(h) Payment. Debt Service Charges with respect to the Series 2006 Bonds shall be payable in lawful money of the United States of America without

deduction for the services of the Trustee or the Paying Agent, in the manner provided in the Trust Agreement.

(i) Book Entry System. The Series 2006 Bonds shall only be originally issued to a Depository for use in a book entry system and: (i) such Series 2006 Bonds shall be registered in the name of the Depository or its nominee, as Bondholder, and immobilized in the custody of the Depository; (ii) there shall be a single Series 2006 Bond representing each maturity; and (iii) such Series 2006 Bonds shall not be transferable or exchangeable, except for transfer to another Depository or another nominee of a Depository or to the Series 2006 Financial Institution in order to obtain payment of principal of Series 2006 Bonds in accordance with the Trust Agreement and in exchange for any Series 2006 Bonds so transferred without further action by the University. The Beneficial Owners shall not have any right to receive Series 2006 Bonds in the form of physical certificates.

So long as a book entry system is in effect for the Series 2006 Bonds, the University and Trustee shall recognize and treat the Depository, or its nominee, as the Holder of the Series 2006 Bonds for all purposes, including payment of Debt Service Charges, giving of notices, and enforcement of remedies. The crediting of payments of Debt Service Charges on the Series 2006 Bonds and the transmittal of notices and other communications by the Depository to Beneficial Owners are the responsibility of the Depository and are not the responsibility of the University or the Trustee; provided, however, that the University and the Trustee understand that neither the Depository or its nominee shall provide any consent requested of Holders of Series 2006 Bonds pursuant to the Trust Agreement, and that the Depository will mail an omnibus proxy (including a list identifying the owners of the book entry interests in the Series 2006 Bonds) to the University which assigns the Depository's, or its nominee's, voting rights to the owners of the book entry interests in the Series 2006 Bonds (as credited to their accounts at the Depository as of the record date for mailing of requests for such consents). Upon receipt of such omnibus proxy, the University shall promptly provide such omnibus proxy (including the list identifying the owners of the book entry interests in the Series 2006 Bonds attached thereto) to the Trustee, who shall then treat such owners as Holders of the Series 2006 Bonds for purposes of obtaining any consents pursuant to the terms of the Trust Agreement.

As long as the Series 2006 Bonds are registered in the name of a Depository, or its nominee, the University and the Trustee agree to comply with the terms and provisions of their agreement with the Depository including the provisions thereof with respect to any delivery of the Series 2006 Bonds to the Trustee which shall supersede the provisions of the Trust Agreement with respect thereto.

Notwithstanding any other provision of this Resolution or any provision of the General Bond Resolution, the Trust Agreement, the Series 2006 Supplemental Trust Agreement or any Series 2006 Bond to the contrary, with the approval of the Fiscal Officer, the Trustee may enter into an agreement with a Depository, or the nominee of a Depository, that is the registered owner of a Series 2006 Bond in the custody of that Depository providing for making all payments to that registered owner of principal of and interest and any premium on that Series 2006 Bond or any portion of that Series 2006 Bond (other than any payment of its entire unpaid principal amount) at a place and in a manner (including wire transfer of federal funds) other than as provided above in this Resolution, without prior presentation or surrender of the Series 2006 Bond, upon any conditions which shall be satisfactory to the Trustee and the Fiscal Officer. That payment in any event shall be made to the person who is the registered owner of that Series 2006 Bond on the date that principal and premium is due, or, with respect to the payment of interest, as of the applicable Regular Record Date or Special Record Date or other date agreed upon, as the case may be. The Trustee will furnish a copy of each of those agreements, certified to be correct by an officer of the Trustee, to other Authenticating Agents and Paying Agents for Series 2006 Bonds, if any, and to the University. Any payment of principal, premium, or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Resolution and Trust Agreement.

(j) Change of Depository and Replacement Series 2006 Bonds. If any Depository determines not to continue to act as a Depository for the Series 2006 Bonds for use in a book entry system, the University may attempt to have established a securities depository/book entry system relationship with another qualified Depository under the Trust Agreement. If the University does not or is unable to do so, the University and the Trustee, after the Trustee has made provision for notification of the owners of book entry interests in the Series 2006 Bonds by appropriate notice to the then Depository, shall permit withdrawal of the Series 2006 Bonds from the Depository, and authenticate and deliver Series 2006 Bond certificates in fully registered form to the assignees of the Depository or its nominee. If the event is not the result of University action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing or otherwise preparing, and delivering, such replacement Series 2006 Bonds), of those persons requesting that authentication and delivery unless University action or inaction shall have been the cause of the termination of the book entry system in which event such cost and expense shall be borne by the University. Such replacement Series 2006 Bonds shall be in Authorized Denominations.

(k) Tender Options. Each Holder and Beneficial Owner shall have the option to tender Series 2006 Bonds for purchase upon such terms as may be set forth in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

(l) Mandatory Tender. The Series 2006 Bonds shall be subject to mandatory tender by the Holders and Beneficial Owners thereof for purchase upon such terms as may be set forth in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement. The Fiscal Officer shall determine in the Series 2006 Certificate of Award whether any obligation on the part of the University to purchase Series 2006 Bonds from their Holders upon the completion of the term of the Series 2006 Credit Support Instrument shall be treated for purposes of the third paragraph of Section 2 of the General Bond Resolution as the conclusion of the term of Series 2006 Bonds.

(m) Remarketing of Series 2006 Bonds. Series 2006 Bonds which have been tendered for purchase shall be remarketed by the Series 2006 Remarketing Agent in the manner set forth or provided for in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement.

Section 5. Sale of the Series 2006 Bonds; Series 2006 Certificate of Award. The Series 2006 Bonds shall be awarded and sold to the Original Purchaser at the price set forth in the Series 2006 Certificate of Award, such price for any maturity of the Series 2006 Bonds shall be not less than 95% of the principal amount thereof, plus accrued interest on the aggregate principal amount of the Series 2006 Bonds from their dates to the date of delivery to and payment by the Original Purchaser, all in accordance with, and subject to the terms and conditions of, the Original Purchaser's proposal contained in the hereinafter described Series 2006 Bond Purchase Agreement. Such award and sale shall be evidenced by the execution of a Series 2006 Certificate of Award by the Fiscal Officer setting forth such award and sale, the other matters to be set forth therein referred to in this Resolution, and such other matters as the Fiscal Officer determines are consistent with this Resolution, the Trust Agreement and the Series 2006 Supplemental Trust Agreement. That the matters contained in the Series 2006 Certificate of Award are consistent with this Resolution, the Trust Agreement and the Series 2006 Supplemental Trust Agreement shall be conclusively evidenced by the execution of the Series 2006 Certificate of Award by such officer. The Series 2006 Certificate of Award shall be and hereby is incorporated into this Resolution and the Series 2006 Supplemental Trust Agreement.

The Fiscal Officer is hereby further authorized and directed to execute and deliver, in the name and on behalf of the University, a bond purchase agreement

with the Original Purchaser (the "Series 2006 Bond Purchase Agreement") upon such terms as approved by such officer not inconsistent with this Bond Legislation and not substantially adverse to the University. The approval of such officer, and that the Series 2006 Bond Purchase Agreement is consistent with this Resolution and not substantially adverse to the University, shall be conclusively evidenced by the execution of the Series 2006 Bond Purchase Agreement by such officer. Subject to receiving any necessary appointment by the attorney general of the State, the Fiscal Officer is hereby authorized to make arrangements with Peck, Shaffer & Williams LLP to serve as bond counsel and underwriter's counsel for the Series 2006 Bonds, and such firm is hereby appointed to serve in such capacities.

The Fiscal Officer, and any other appropriate officer of the University, are each hereby separately authorized to make arrangements for the delivery of the Series 2006 Bonds to, and payment therefor by, the Original Purchaser. It is hereby determined that the price for and the terms of the Series 2006 Bonds, and the sale thereof, all as provided in this Resolution, the Series 2006 Supplemental Trust Agreement and the Series 2006 Certificate of Award are in the best interest of the University and in compliance with all legal requirements.

Section 6. Allocation of Proceeds of Series 2006 Bonds. All of the proceeds from the sale of the Series 2006 Bonds shall be received and receipted for by the Fiscal Officer, and shall be deposited and allocated as follows:

(a) To the Debt Service Account of the Debt Service Fund, the portion of such proceeds representing accrued interest and any capitalized interest directed to be deposited in the Debt Service Account by the Series 2006 Certificate of Award; and

(b) To an appropriate account or fund, an amount sufficient to refund the Series 2005 Notes, which account or fund and amount shall be determined in the Series 2006 Certificate of Award; and

(c) To the Series 2006 Projects Account which is hereby created as a separate deposit account within the Facilities Fund (except when invested as hereinafter provided) in the custody of the University or the Trustee or other entity, as the Fiscal Officer shall determine, the balance of such proceeds.

Any such capitalized interest may be deposited in a separate sub-account of the Debt Service Account of the Debt Service Fund as the Fiscal Officer may determine. Upon a determination by the Fiscal Officer that any portion of such amount designated to be used for capitalized interest is not needed for such purpose, such portion may be transferred to the Series 2006 Projects Account.



Such proceeds are hereby appropriated for the purposes of the respective funds and accounts into which such proceeds are deposited.

No provision shall be made for a Debt Service Reserve Account with respect to the Series 2006 Bonds, and there shall be no Required Reserve for the Series 2006 Bonds. The Series 2006 Bonds shall not be payable from, and the Series 2006 Bonds shall not be secured by, any moneys in or investments credited to the Debt Service Reserve Account, and therefore, Debt Service Charges on the Series 2006 Bonds shall not have access to or claims upon the Debt Service Reserve Account.

Section 7. Series 2006 Projects Account; Recordkeeping; Application of Moneys. A record of each deposit into and disbursement from the Series 2006 Projects Account shall be made and maintained by the party having custody of such account.

Moneys in the Series 2006 Projects Account shall be used to pay Costs of University Facilities related to the 2006 Projects, capitalized interest to a date as may be set forth in the Series 2006 Certificate of Award and any costs associated with the issuance of the Series 2006 Bonds and the refunding of the Series 2005 Notes, and shall be disbursed upon the written request of the Fiscal Officer on behalf of the University. The University covenants that it will proceed with due diligence to pay such costs and complete the 2006 Projects. Upon the final payment of such costs, the University shall deliver to the Trustee a certificate of the Fiscal Officer on behalf of the University stating that fact and setting forth the amount, if any, then remaining in the Series 2006 Projects Account which shall be transferred to the Debt Service Account of the Debt Service Fund pursuant to this Section.

Upon such certification, any moneys remaining in the Series 2006 Projects Account and certified pursuant to the preceding paragraph shall be transferred by the party having custody of such Fund to the Debt Service Account of the Debt Service Fund as set forth in the immediately preceding paragraph.

Moneys in the Series 2006 Projects Account may be invested in any lawful University investments in amounts maturing not later than the times when such amounts in the Series 2006 Projects Account are required to pay any costs payable from such Fund. Any investment made by the Trustee shall be at the written or oral (and, if oral, promptly confirmed in writing) direction of the Fiscal Officer. The term "lawful University investments" shall mean those investments made in accordance with the *Statement of Objectives and Policies for Non-Endowment Invested Funds*, approved by the Board on February 14, 2003, as the same may be amended or supplemented from time to time. Such investments may include qualifying money market mutual funds for which the Trustee or any of its affiliates provide

services for a fee, whether as an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or otherwise.

Any investment of moneys in the Series 2006 Projects Account shall constitute a part of the Series 2006 Projects Account and the Series 2006 Projects Account shall be credited with all proceeds of sale, and gain or loss, from such investment. Interest earnings on moneys in the Series 2006 Projects Account shall be credited when received to the Series 2006 Projects Account. For investment purposes only, moneys in the Series 2006 Projects Account may be commingled with moneys from one or more funds held by the Trustee pursuant to the Trust Agreement; provided that separate records are maintained for each such fund, the investments made therefrom, and the interest earnings credited thereto.

Section 8. Series 2006 Supplemental Trust Agreement. The Chairman of the Board, the President of the University, the Secretary of the Board and the Fiscal Officer, or any one or more of them, are each authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the University, a Series 2006 Supplemental Trust Agreement pursuant to the Trust Agreement in connection with the issuance of the Series 2006 Bonds, in a form not substantially adverse to the University as may be permitted by the Act and the Trust Agreement and approved by the officer or officers executing the same on behalf of the University. The approval of such form by the Board and such officer or officers, and the fact that such forms are not substantially adverse to the University, shall be conclusively evidenced by the execution of the Series 2006 Supplemental Trust Agreement by such officer or officers.

Consistent with Section 8.02 of the Original Trust Agreement, the University and the Trustee, without the consent of or notice to any of the Bondholders, may enter into agreements supplemental to the Trust Agreement and the Series 2006 Supplemental Trust Agreement to the extent necessary or desirable to permit (i) the transfer of Series 2006 Bonds from one Depository to another, and the succession of Depositories or (ii) the withdrawal of Series 2006 Bonds issued to a Depository for use of a book entry system and the issuance of replacement Series 2006 Bonds in fully registered form to others than a Depository.

The Chairman of the Board, the President of the University, the Secretary of the Board and the Fiscal Officer are each separately authorized to execute and deliver, on behalf of the University, such other certificates, documents and instruments as are necessary in connection with the transactions authorized in this Resolution, and to do all other things required of them or the University pursuant to the Trust Agreement and this Resolution.

The appropriate officers of the University shall do all things necessary or proper to implement and carry out the orders and agreements set forth in or approved in this Resolution for the proper fulfillment of the purposes of the General Bond Resolution and this Resolution. The Secretary of the Board shall furnish to the Original Purchaser a true and certified transcript of all proceedings taken with reference to the authorization and issuance of the Series 2006 Bonds along with other information as is necessary or proper with respect to the Series 2006 Bonds.

If the Fiscal Officer determines in the Series 2006 Certificate of Award that it is in the best interest of the University, the Series 2006 Bonds may be combined with the Series 2005 Bonds for purposes of sale and in such case, the provisions of this Resolution, the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement shall be deemed incorporated into the Series Resolution and the Supplemental Trust Agreement related to the Series 2005 Bonds and constitute a single set of Bond Proceedings. In such case, such Bonds (the "Consolidated Bonds") shall express upon their faces a summary statement of purposes encompassing the purposes stated in this Resolution and in the Series Resolution authorizing the Series 2005 Bonds, and the proceeds from the sale of the Consolidated Bonds shall be apportioned, deposited and credited in accordance with this Resolution and the Series Resolution authorizing the Series 2005 Bonds to the respective purposes and funds set forth herein and therein in accordance with the amount of each issue included in the Consolidated Bond issue and determinations of the Fiscal Officer made in the Series 2006 Certificate of Award. The Fiscal Officer is hereby authorized to make such determinations in the Series 2006 Certificate of Award as the Fiscal Officer deems necessary to accomplish the sale and issuance of such an issue of Consolidated Bonds, and such determinations shall be conclusively evidenced by the execution of the Series 2006 Certificate of Award by the Fiscal Officer.

Section 9. Tax Matters. The University hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Tax-Exempt Series 2006 Bonds under Section 103(a) of the Code. Without limiting the generality of the foregoing, the University hereby covenants as follows:

(a) The University will not directly or indirectly use or permit the use of any proceeds of the Tax-Exempt Series 2006 Bonds or any other funds of the University, or take or omit to take any action that would cause the Tax-Exempt Series 2006 Bonds to be "arbitrage bonds" within the meaning of Sections 103(b)(2) and 148 of the Code. To that end, the University will comply with all requirements of Sections 103(b)(2) and 148 of the Code to the extent applicable to the Tax-Exempt Series 2006 Bonds. In the event that at any time the University is

of the opinion that for purposes of this sub-section (a) it is necessary to restrict or limit the yield on the investment of any moneys held by the Trustee under the Trust Agreement, the Fiscal Officer shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions. The Fiscal Officer, or any other officer having responsibility with respect to the issuance of the Tax-Exempt Series 2006 Bonds, is authorized and directed to give an appropriate certificate on behalf of the University, on the date of delivery of the Tax-Exempt Series 2006 Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of such Sections 103(b)(2) and 148, and to execute and deliver on behalf of the University an IRS Form 8038G in connection with the issuance of the Tax-Exempt Series 2006 Bonds.

Without limiting the generality of the foregoing, the University agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code. This covenant shall survive payment in full or defeasance of the Tax-Exempt Series 2006 Bonds. The University specifically covenants to pay or cause to be paid to the United States at the times and in the amounts determined under Section 10 hereof the Rebate Amounts, as described in the Memorandum of Instructions. The Trustee agrees to perform all tasks required of it in the Memorandum of Instructions.

Notwithstanding any provision of this sub-section (a), if the University shall provide to the Trustee an opinion of nationally recognized bond counsel to the effect that any action required under this Section and Section 10 of this Resolution is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Tax-Exempt Series 2006 Bonds pursuant to Section 103(a) of the Code, the University and the Trustee may rely conclusively on such opinion in complying with the provisions hereof.

(b) So long as any of the Tax-Exempt Series 2006 Bonds, or any obligations issued to refund the Tax-Exempt Series 2006 Bonds, remain unpaid, the University will not operate or use, or permit the operation or use of, the 2006 Projects or any part thereof in any trade or business carried on by any person within the meaning of the Code which would (i) cause the Tax-Exempt Series 2006 Bonds to be "private activity bonds" within the meaning of Section 141 of the Code, and (ii) result in the interest payable on the Tax-Exempt Series 2006 Bonds to be not exempt from federal income taxation under the Code.

#### Section 10. Rebate Fund.

(a) There has previously been created and ordered maintained in the custody of the Trustee (except when invested as herein provided), the Rebate Fund,

which shall not constitute a Special Fund or Account securing the Series 2006 Bonds or other Obligations. There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Memorandum of Instructions. Subject to the transfer provisions provided in paragraph (d) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Amount (as defined in the Memorandum of Instructions), for payment to the United States of America, and neither the University nor the owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section, by Section 9 of this Resolution and by the Memorandum of Instructions (which is incorporated herein by reference).

(b) The Trustee shall have no obligations to rebate any amounts required to be rebated pursuant to this Section, other than from moneys held in the funds created under the Trust Agreement or from other moneys provided to it by the University upon its request for said moneys from the University as set forth in the Memorandum of Instructions.

(c) The Trustee shall, at the direction of the University, invest amounts held in the Rebate Fund and deposit all earnings on such amounts as provided in the Memorandum of Instructions.

(d) The Trustee shall remit moneys in the Rebate Fund to the United States, as directed in the Memorandum of Instructions. Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor satisfactory to the Trustee shall be withdrawn and remitted to the University.

(e) Notwithstanding any other provision of this Resolution or the Trust Agreement, the obligation to remit the Rebate Amounts to the United States and to comply with all other requirements of this Section, Section 9 of this Resolution and the Memorandum of Instructions shall survive the defeasance or payment in full of the Bonds.

Section 11. Official Statement. The Fiscal Officer is hereby authorized to execute and deliver preliminary and final official statements on behalf of the University, in such forms as such officer may approve, and to deem such official statements to be "final" for purposes of Securities and Exchange Commission Rule 15c2-12, such officer's execution thereof on behalf of the University to be conclusive evidence of such authorization, approval and deeming, and copies thereof are hereby authorized to be prepared and furnished to the Original Purchaser for distribution to prospective purchasers of the Series 2006 Bonds and other interested persons.

The Fiscal Officer on behalf of the University is hereby authorized to execute and deliver a continuing disclosure certificate or agreement dated as set forth in the Series 2006 Certificate of Award (the "Continuing Disclosure Certificate") in connection with the issuance of the Series 2006 Bonds in such form as such officer may approve. The University hereby covenants and agrees that it will execute, comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Failure to comply with any such provisions of the Continuing Disclosure Certificate shall not constitute a default on the Series 2006 Bonds; however, any holder or owner of the Series 2006 Bonds may take such action as may be necessary and appropriate, including seeking specific performance, to cause the University to comply with its obligations under this paragraph and the Continuing Disclosure Certificate.

The Fiscal Officer on behalf of the University is hereby authorized to furnish such information, to execute such instruments and to take such other actions in cooperation with the Original Purchaser as may be reasonably requested to qualify the Series 2006 Bonds for offer and sale under the Blue Sky or other securities laws and regulations and to determine their eligibility for investment under the laws and regulations of such states and other jurisdictions of the United States of America as may be designated by the Original Purchaser; provided however, that the University shall not be required to register as a dealer or broker in any such state or jurisdiction or become subject to the service of process in any jurisdiction in which the University is not now subject to such service.

Section 12. Series 2006 Credit Support Instrument. The Fiscal Officer is hereby authorized to apply for a Credit Support Instrument with respect to one or more series of the Series 2006 Bonds. The Fiscal Officer is hereby authorized to select a Financial Institution having qualifications and duties as set forth in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement to serve as the Series 2006 Financial Institution and to provide any Series 2006 Credit Support Instrument, and to accept the commitment of the Series 2006 Financial Institution therefor, and the payment of the fees, premiums and expenses relating to the Series 2006 Credit Support Instrument from sources described in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement is hereby authorized. The Chairman of the Board, the President of the University, the Secretary of the Board and the Fiscal Officer, or any one or more of them, are each authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the University, a reimbursement agreement or other agreement with the Series 2006 Financial Institution providing for the payment of the fees and expenses of the Series 2006 Financial Institution and the reimbursement, and security for the reimbursement, of the Series 2006 Financial Institution for advances made pursuant to the Series 2006 Credit Support Instrument, in such form as may be permitted by

the Act and approved by the officer or officers executing the same on behalf of the University. The approval of such form by the Board and such officer or officers shall be conclusively evidenced by the execution of such agreement by such officer or officers.

Section 13. Interest Rate Hedges. The Fiscal Officer is hereby authorized to (i) apply for one or more Interest Rate Hedges with respect to all or a portion of the Series 2006 Bonds, (ii) select a provider of such Interest Rate Hedge by negotiation or by a bidding process, based on the Fiscal Officer's best judgment as to which approach best serves the interest of the University, and (iii) accept the commitment of such provider therefor. The Fiscal Officer is authorized to retain such consultants and professional advisors as the Fiscal Officer deems necessary to accomplish the Interest Rate Hedge in the manner most beneficial to the University, and if a negotiated process is to be used, to select the counterparty and to approve the market-based terms for such Interest Rate Hedge. The payment of the fees and expenses of such consultants and advisors or otherwise related to any Interest Rate Hedge from the moneys in the Series 2006 Projects Account, or other sources described in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement is hereby authorized.

Any Interest Rate Hedge may be secured by a pledge of the General Receipts, either on a parity basis with the outstanding Obligations payable from the same sources as the Series 2006 Bonds, or on a subordinated basis payable as provided in the documentation for the Interest Rate Hedge (the "Hedge Documents"). The Chairman of the Board, the President of the University, the Secretary of the Board and the Fiscal Officer, or any one or more of them, are each authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the University, any Hedge Documents, in such form as may be permitted by the Act and approved by the officer or officers executing the same on behalf of the University. The approval of such form by the Board and such officer or officers shall be conclusively evidenced by the execution of such Hedge Documents by such officer or officers.

Consistent with Sections 8.02 and 10.02 of the Original Trust Agreement, the University and the Trustee, without the consent of or notice to any of the Bondholders but with the consent of any applicable Financial Institutions, may enter into agreements supplemental or amendatory to the Trust Agreement and the Series 2006 Supplemental Trust Agreement to the extent necessary or desirable to permit an Interest Rate Hedge to take place upon terms acceptable to the University, particularly with respect to how the amounts to be paid by the University pursuant to the Hedge Documents are to be treated for calculating annual amounts payable on the Obligations. Any Authorized Officer is hereby authorized and directed, in the name and on behalf of the University, and as its corporate act and deed, to

negotiate, execute and deliver amendments or supplements to the Trust Agreement and the Series 2006 Supplemental Trust Agreement determined by the Authorized Officer to be necessary and appropriate to accomplish any Interest Rate Hedge in such forms not substantially adverse to the University as may be permitted by the Act and approved by the Authorized Officer executing the same on behalf of the University. The approval of such forms by the Board and such officer or officers, and the fact that such forms are not substantially adverse to the University, shall be conclusively evidenced by the execution of such amendments or supplements by such Authorized Officer.

Section 14. Series 2006 Remarketing Agent. The Fiscal Officer is hereby authorized to select a Remarketing Agent having qualifications and duties as set forth in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement to serve as the Series 2006 Remarketing Agent for the Series 2006 Bonds, and the payment of the fees and expenses relating to the remarketing of the Series 2006 Bonds from sources described in the Series 2006 Certificate of Award and the Series 2006 Supplemental Trust Agreement is hereby authorized. The Chairman of the Board, the President of the University, the Secretary of the Board and the Fiscal Officer, or any one or more of them, are each authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the University, an agreement with the Series 2006 Remarketing Agent providing for its services and the payment of the fees and expenses of the Series 2006 Remarketing Agent, in such form as may be permitted by the Act and approved by the officer or officers executing the same on behalf of the University. The approval of such form by the Board and such officer or officers shall be conclusively evidenced by the execution of such agreement by such officer or officers.

Section 15. Temporary Series 2006 Bonds. Pending the preparation of definitive Series 2006 Bonds the University may execute and the Trustee shall authenticate and deliver temporary Series 2006 Bonds in printed or typewritten form. Temporary Series 2006 Bonds shall be issuable in fully registered form, of any denomination, and substantially in the form of the definitive Series 2006 Bonds but with such omissions, insertions and variations as may be appropriate for temporary Series 2006 Bonds, all as may be determined by the Fiscal Officer. Every temporary Series 2006 Bond shall be executed on behalf of the University, and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Series 2006 Bonds. If one or more temporary Series 2006 Bonds are issued, then without unnecessary delay the University shall execute and furnish to the Trustee in exchange therefor without charge, and the Trustee shall authenticate and deliver in exchange for such temporary Series 2006 Bonds an equal aggregate principal amount of definitive Series 2006 Bonds. Until



so exchanged the temporary Series 2006 Bonds shall be entitled to the same benefits under the Trust Agreement as definitive Series 2006 Bonds.

Section 16. Prior Actions Approved. All actions hereto taken by officers and employees of the Board and the University in connection with the approval, authorization, sale, execution, delivery and issuance of the Prior Obligations or the security therefor, or any Interest Rate Hedge or Credit Support Instrument related thereto, are hereby approved, ratified and confirmed.

Section 17. Additional Special Funds and Accounts. The Fiscal Officer is hereby authorized to create such additional Special Funds and Special Accounts in connection with the Series 2006 Bonds and the security therefor and the remarketing thereof as the Fiscal Officer deems necessary. Any such Special Funds and Accounts and the permitted investment thereof shall be described in the Series 2006 Certificate of Award.

Section 18. Relationship of this Resolution to General Bond Resolution. It is understood and acknowledged by the University that the Series 2006 Bonds are being issued pursuant to the terms of the General Bond Resolution, as amended and supplemented by the terms of this Resolution; that the Series 2006 Bonds are subject to all of the terms and conditions of the General Bond Resolution, as amended, except as otherwise provided herein; and that all of the terms, conditions, covenants and warranties contained in the General Bond Resolution, as amended, except as otherwise provided herein, shall apply with like force and effect to the Series 2006 Bonds as if originally made in connection therewith. The General Bond Resolution and the Trust Agreement, as amended and supplemented to date including by this Resolution, and the Obligations issued to date thereunder, including the Prior Obligations, are hereby approved, ratified and confirmed.

Section 19. General. This Resolution is adopted pursuant to the General Bond Resolution and the Trust Agreement. The appropriate officers of the University shall do all things necessary and proper to implement and carry out the orders and agreements set forth in or approved in the General Bond Resolution and this Resolution for the proper fulfillment of the purposes thereof. Without limiting the generality of the foregoing, the Fiscal Officer and other appropriate officers of the University are hereby authorized to apply to the Ohio Board of Regents for any required approvals with respect to the 2006 Projects or the Series 2006 Bonds. Should all the Series 2006 Projects or the Series 2006 Bonds not receive such approvals by the time the Series 2006 Bonds are sold, the Fiscal Officer shall set forth in the Series 2006 Certificate of Award the 2006 Projects and the amount of Series 2006 Bonds that have received such approvals. Thereupon, the Series 2006 Bonds shall be issued in a principal amount not exceeding the amount approved by

the Ohio Board of Regents and the 2006 Projects shall include only the projects approved by the Ohio Board of Regents.

Section 20. Inconsistencies. All orders, resolutions and other official actions, or parts thereof, inconsistent herewith or with the documents hereby authorized, approved, ratified or confirmed are hereby repealed, but only to the extent of such inconsistency. This Resolution shall not be construed as otherwise revising any order, resolution or other official action, or part thereof.

Section 21. Open Meeting Determination. It is found and determined that all formal actions of the Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board, and that all deliberations of the Board and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Revised Code of Ohio.

Section 22. Effective Date. This Resolution shall take effect and be in force immediately upon its adoption.

Adopted: [Date of 2005 Resolution]

Interim Vice President for Finance and Administration Larry Corrigan presented the resolution. He described the development of the Enterprise System and that this request was part of a ten-year amortization schedule, with a balloon payment in 2010.

Mr. DeLawder moved approval of the resolution. Mr. Kidder seconded the motion. All voted aye.

#### RESOLUTION 2005 - 2022

#### PROVIDING FOR THE AUTHORIZATION, ISSUANCE AND SALE OF NOT TO EXCEED \$7,050,000 GENERAL RECEIPTS BOND ANTICIPATION NOTES OF THE OHIO UNIVERSITY

WHEREAS, by authority of Sections 3345.11 and 3345.12 of the Ohio Revised Code (the "Act"), The Ohio University (hereinafter called the "University"), a state university of Ohio created and existing under Chapter 3337 of the Ohio Revised Code, is authorized to acquire and construct "facilities", as therein defined, to issue its obligations to pay all or part of the costs of such facilities or to reimburse itself for such costs which it has paid from its own funds, and to refund obligations previously issued, in accordance with the applicable provisions of Section 3345.12 of the Act, and to secure said obligations by a pledge of and lien on all or such part of the "available receipts" of the University (as defined in such section) as may be provided for in the proceedings authorizing such obligations, excluding moneys raised by taxation and state appropriations; and

WHEREAS, the University, pursuant to Section 3345.12 of the Act and a General Bond Resolution adopted by this Board of Trustees (hereinafter called the "Board") on April 14, 1972, entered into a Trust Agreement (the "Indenture") dated as of June 1, 1972 (of which a resolution of the Board known as the "General Bond Resolution" constitutes a part), providing for the issuance from time to time of General Receipts Bonds of the University and pledging such available receipts as security for such bonds; and

WHEREAS, the University has previously issued general receipts bond anticipation notes in the principal amount of \$7,650,000 (the "Prior Notes") for the purpose of acquiring administrative information management systems including expenses necessary or incident to such acquisition of these systems and the placing of them in use and operation, and costs of issuance of such notes (collectively, the "Project"), which notes were issued in anticipation of the issuance of General

Receipts Bonds of the University under and pursuant to Section 3345.12 of the Act and Resolution No. 2004-1967, adopted by the Board on December 17, 2004; and

WHEREAS, it is necessary and desirable to refund the Prior Notes in the principal amount of \$7,050,000 by issuing general receipts bond anticipation notes pursuant to Section 3345.12 of the Act in anticipation of the issuance of General Receipts Bonds of the University under the Indenture and the General Bond Resolution, and which such bond anticipation notes are to be secured as hereinafter provided;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE PRESIDENT AND TRUSTEES OF THE OHIO UNIVERSITY, AS FOLLOWS:

SECTION 1. In order to obtain funds for the purpose of refunding the Prior Notes, the Board hereby determines that (i) it is necessary and in the best interests of the University to issue General Receipts Bonds of the University in a principal amount not to exceed \$7,050,000 bearing interest at the rate of approximately six per cent (6%) per annum, maturing in substantially equal annual or semiannual installments of principal and interest over a period not exceeding thirty (30) years after their issuance, and having an estimated annual principal and interest payment of approximately \$650,000, (ii) it is necessary and in the best interests of the University to issue notes in anticipation of the issuance of such bonds in a principal amount not to exceed \$7,050,000 (herein the "Notes") pursuant to the laws of the State of Ohio, and particularly the Act, upon the terms set forth herein; and (iii) the Project will constitute "auxiliary facilities" or "education facilities" as defined in the Act.

The Notes shall (i) be issued in a principal amount not to exceed \$7,050,000 in one or more series; (ii) be of the denominations, dated and numbered; (iii) bear interest at a rate or rates not exceeding six per cent (6%) per annum, based on a 360-day year comprised of twelve 30-day months, payable at maturity; and (iv) mature on a date not exceeding one year from the date of issuance; all as determined by the Interim Vice President for Finance and Administration and Treasurer of the University (herein the "Treasurer"). The Notes may be subject to call for redemption prior to maturity, upon such terms as the Treasurer may determine. The principal of and interest on the Notes shall be payable upon presentation at maturity in lawful money of the United States of America at the office of the Treasurer or at such bank or trust company as may be designated by the Treasurer (herein the "Paying Agent"). The Notes may be issued in bearer or fully registered form, without coupons, as determined by the Treasurer, and the Paying Agent shall serve as Note registrar and transfer agent for any Notes issued as registered

obligations. If the Notes are issued in registered form, principal and interest shall be paid only to the registered owner thereof as shown on the Note registration records maintained by the Paying Agent on behalf of the University.

Notes issued in registered form shall be transferable by the registered holder thereof in person or by his attorney duly authorized in writing at the principal office of the Paying Agent upon presentation and surrender thereof to the Paying Agent. The University and the Paying Agent shall not be required to transfer any registered Note during the 15-day period preceding any interest payment date or preceding any selection of Notes to be redeemed, or after such Note has been selected for partial or complete redemption, and no such transfer shall be effective until entered upon the registration records maintained by the Paying Agent. Upon such transfer, a new Note or Notes of authorized denominations of the same maturity and for the same aggregate principal amount shall be issued to the transferee in exchange therefor. The University and the Paying Agent may deem and treat the registered holders of registered Notes as the absolute owners thereof for all purposes, and neither the University nor the Paying Agent shall be affected by any notice to the contrary.

**SECTION 2.** The Notes shall bear such designation to distinguish them from other obligations of the University as shall be made by the Treasurer, shall be negotiable instruments and shall express upon their face the purpose for which they are issued and that they are issued pursuant to general laws of Ohio, particularly the Act, and to this Resolution. The Notes shall bear the manual or facsimile signatures of the Chairman of the Board or the President of the University and the Treasurer and may bear the official seal of the University or a facsimile thereof, and shall bear the manual authenticating signature of the Paying Agent or an authorized representative of the Paying Agent.

**SECTION 3.** The Notes shall be awarded and sold to a registered municipal securities dealer, selected by the Treasurer, experienced in underwriting state and local bond issues (the "Original Purchaser"), at a price determined by the Treasurer provided that such price shall be not less than 100% of the principal amount thereof, plus accrued interest on the aggregate principal amount of the Notes from their date to the date of delivery to and payment by the Original Purchaser, all in accordance with, and subject to the terms and conditions of, the Original Purchaser's proposal contained in the hereinafter-described note purchase agreement. The determinations and designations to be made by the Treasurer pursuant to this Resolution and such award and sale shall be evidenced by the execution of a certificate of award (the "Certificate of Award") by the Treasurer setting forth such award and sale, the other matters to be set forth therein referred to in this Resolution, and such other matters as the Treasurer determines are consistent with this Resolution, including without limitation, restrictions on the issuance of

additional notes on a parity with the Notes and requirements for payments into the Note Payment Fund. That the matters contained in the Certificate of Award are consistent with this Resolution shall be conclusively evidenced by the execution of the Certificate of Award by such officer.

The Treasurer is hereby further authorized and directed to execute and deliver, in the name and on behalf of the University, a note purchase agreement with the Original Purchaser upon such terms as approved by such officer not inconsistent with this Resolution, and not substantially adverse to the University. The approval of such officer, and that such note purchase agreement is consistent with this Resolution and not substantially adverse to the University, shall be conclusively evidenced by the execution of such note purchase agreement by such officer. The Treasurer is hereby authorized to make arrangements with Carlile Patchen & Murphy LLP to serve as bond counsel and underwriter's counsel for the Notes, and such firm is hereby appointed to serve in such capacities.

The Treasurer, and any other appropriate officers of the University, are each hereby separately authorized to make arrangements for the delivery of the Notes to, and payment therefor by, the Original Purchaser, to give all appropriate notices and certificates and to take all actions necessary to effect the due authorization, execution and delivery of the Notes pursuant to the provisions of the note purchase agreement. It is hereby determined that the price for and the terms of the Notes, and the sale thereof, all as provided in this Resolution, are in the best interest of the University and in compliance with all legal requirements.

SECTION 4. The proceeds from the sale of the Notes shall be deposited and allocated as follows:

- (a) \$7,050,000 shall be deposited in the Note Payment Fund referred to in the Prior Resolution and used, along with other moneys deposited by the University in the Note Payment Fund, to pay the principal of and interest on the Prior Notes at their maturity.

Such proceeds shall be used for the purposes set forth above and for no other purpose. Pending such use, the proceeds of sale of the Notes may be invested in lawful University investments approved by the Treasurer. Any of such proceeds remaining after the completion of the Project shall be transferred to the Note Payment Fund and used to pay the principal of and interest on the Notes. Interest on such proceeds shall be deposited in such fund or account of the University as the Treasurer shall determine.

The Notes shall be payable from a special fund previously created in the custody of the University or the Paying Agent, as determined by the Treasurer (the "Note Payment Fund") which shall be used solely for the payment of the principal of and interest on the Notes. Moneys for the payment of the principal of and interest on the Notes, but only from the hereinafter-described sources, shall be deposited in the Note Payment Fund not later than the date on which payment of the Notes is payable. Interest on such moneys shall be deposited in such fund or account of the University as the Treasurer shall determine.

SECTION 5. Principal of and interest on the Notes, together with the principal of and interest on any other notes that may currently be outstanding or that may hereafter be issued by the University on a parity therewith, shall be equally and ratably payable from and secured by a pledge of and a lien on, the "General Receipts" of the University as defined in Section 1 of the General Bond Resolution, but subject to the existing pledges thereof in favor of the University's General Receipts Bonds heretofore or hereafter issued pursuant to the General Bond Resolution and the Indenture. The principal of and interest on the Notes shall also be equally and ratably payable from, and secured by a pledge of and lien on, the moneys and investments in the Note Payment Fund and the proceeds of the sale of bonds or notes issued pursuant to the Act or other authorizing provisions of law to refund or retire the Notes which shall be deposited in the Note Payment Fund; provided that neither the State of Ohio, the University nor the Board shall be obligated to pay the principal of or interest on the Notes from any other funds or source, nor shall the Notes be a claim upon or lien against any property of the State of Ohio or any other property of or under the control of the University, and the Notes, as to both principal and interest, shall not be debts or bonded indebtedness of the State of Ohio, shall not constitute general obligations of the State of Ohio or the University, the full faith and credit thereof are not pledged thereto, and the owners of the Notes shall have no right to have any excises or taxes levied by the General Assembly of the State of Ohio for the payment of such principal or interest.

In consideration of the loan evidenced by the Notes, the University covenants and agrees that (i) it will use its best efforts to do all things necessary to effect the authorization, issuance and delivery, prior to the maturity of the Notes, of bonds or notes to refund or retire the Notes, pursuant to the Act, or other authorizing provisions of law, in such principal amount as shall be necessary together with other lawfully available funds, if any, to pay the principal of and interest on the Notes, (ii) it will do all things necessary to sell such bonds or notes at the time provided above and will accept such price and such interest rate or rates as shall be necessary in order to effect such sale, and (iii) it shall apply the proceeds of such bonds or notes to the extent necessary to make full payment of the principal of and interest on the Notes; such obligations are established as duties specifically enjoined by law upon the

University and its officers, and resulting from their respective offices, trusts or stations within the meaning of Section 2731.01 of the Ohio Revised Code. In connection with the aforesaid covenant, it is the present intention of the University that such bonds as may be issued to retire the Notes will be issued as "General Receipts Bonds" pursuant to the General Bond Resolution.

SECTION 6. The foregoing pledges in favor of the Notes shall be released upon the deposit by the University, in the Note Payment Fund, of cash or noncallable direct obligations of the United States of America, or a combination thereof (which United States government securities mature on or before the maturity date of the Notes) in an amount sufficient fully to discharge the principal and interest requirements of the Notes at and prior to maturity.

SECTION 7. In the event any of the Notes shall not be presented for payment when the principal thereof becomes due, if moneys for the purpose of paying, and sufficient to pay, such Note shall have been made available to the Paying Agent therefor, it shall be the duty of the Paying Agent to hold such moneys in trust, without liability to the University or the owner of the Note for interest thereon, for the benefit of such owner, who shall, subject to the provisions of this Section, thereafter be restricted exclusively to such moneys for any claim of whatever nature on his part under this Resolution or on, or with respect to, such Note. Any moneys which shall be so held by the Paying Agent, and which remain unclaimed by the owner of the Note not presented for payment, for a period of three years after the date on which such Note shall have become payable as provided above, shall, upon request in writing by the University, be paid to the University, and thereafter the owner of such note shall look only to the University for payment and then only to the amounts, or to the extent of amounts, so received by the University without any interest thereon, and the Paying Agent shall have no further responsibility with respect to such moneys.

The moneys paid to the University pursuant to this Section shall be credited by it to a special fund of the University, as a trust fund separate and apart from other funds of the University, to be maintained in an account or accounts with a bank or banks that are members of the Federal Deposit Insurance Corporation. The University shall keep a record of the amounts so deposited in said special fund, and moneys in such fund shall be applied to payment of principal of the Note or Notes with respect to which such money is transferred to the University. Moneys in such special fund unclaimed for fifteen years after such moneys are paid to the University shall become the absolute property of the University free from all claims of any kind.

SECTION 8. The Board hereby covenants, for and on behalf of the University, that the University will not take any action, or fail to take any action, if



any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Notes under Section 103(a) of the Internal Revenue Code of 1986 and regulations promulgated thereunder (the "Code"). Without limiting the generality of the foregoing, the University hereby covenants as follows:

(a) The University will not directly or indirectly use or permit the use of any proceeds of the Notes or any other funds of the University, or take or omit to take any action that would cause the Notes to be "arbitrage bonds" within the meaning of Sections 103(b)(2) and 148 of the Code. To that end, the University will comply with all requirements of Sections 103(b)(2) and 148 of the Code to the extent applicable to the Notes, including any expenditure requirement, investment limitations or rebate requirements. The Treasurer, or any other officer having responsibility with respect to the issuance of the Notes, is authorized and directed to give an appropriate certificate on behalf of the University, on the date of delivery of the Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of such Sections 103(b)(2) and 148, and to execute and deliver on behalf of the University an IRS Form 8038G in connection with the issuance of the Notes.

Without limiting the generality of the foregoing, the University agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code. This covenant shall survive payment in full or defeasance of the Notes. The University specifically covenants to pay or cause to be paid to the United States at the times and in the amounts determined under such section.

Notwithstanding any provision of this sub-section (a), if the University shall obtain an opinion of nationally recognized bond counsel to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Notes pursuant to Section 103(a) of the Code, the University may rely conclusively on such opinion in complying with the provisions hereof.

(b) So long as any of the Notes, or any obligations issued to refund the Notes, remain unpaid, the University will not operate or use, or permit the operation or use of, the Project or any part thereof in any trade or business carried on by any person within the meaning of the Code which would cause the Notes to be "private activity bonds" within the meaning of Section 141 of the Code.

SECTION 9. For purposes of this Resolution, the following terms shall have the following meanings:

"Book entry form" or "book entry system" means a form or system under which (i) the beneficial right to payment of principal of and interest on the Notes may be transferred only through a book entry, and (ii) physical Note certificates in fully registered form are issued only to the Depository or its nominee as registered owner, with the Notes "immobilized" to the custody of the Depository, and the book entry maintained by others than the University is the record that identifies the owners of beneficial interests in those Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, together with its Participants or otherwise, a book entry system to record ownership of beneficial interests in Notes or principal and interest, and to effect transfers of Notes, in book entry form, and including and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

Upon a determination by the Treasurer, all or any portion of the Notes may be initially issued to a Depository for use in a book entry system, and the provisions of this Section shall apply to such Notes, notwithstanding any other provision of this Resolution. If and as long as a book entry system is utilized with respect to any of the Notes: (i) there shall be a single Note of each maturity; (ii) those Notes shall be registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (iii) the beneficial owners of the Notes in book entry form shall have no right to receive Notes in the form of physical securities or certificates; (iv) ownership of beneficial interests in any Notes in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (v) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without

further action by the Board of Trustees. Debt service charges on the Notes in book entry form registered in the name of a Depository or its nominee shall be payable in the manner provided in the University's agreement with the Depository to the Depository or its authorized representative.

The Paying Agent may, with the approval of the Treasurer (if the Paying Agent is an entity other than the Treasurer), enter into an agreement with the beneficial owner or registered owner of any Note in the custody of a Depository providing for making all payments to that owner of principal and interest on that Note or any portion thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner (including wire transfer of federal funds) other than as provided in this Resolution, without prior presentation or surrender of the Note, upon any conditions which shall be satisfactory to the Paying Agent and to the officer executing the same. That payment in any event shall be made to the person who is the registered owner of that Note on the date that principal is due, or, with respect to the payment of interest, as of the applicable date agreed upon as the case may be. The Paying Agent shall furnish a copy of each of those agreements, certified to be correct by the Paying Agent, to other paying agents for Notes and to the Treasurer (if the Paying Agent is an entity other than the Treasurer). Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for the purposes of, this Resolution.

The Treasurer is authorized and directed to execute, acknowledge and deliver, in the name of and on behalf of the University, a letter agreement with The Depository Trust Company, as Depository, to be delivered in connection with the issuance of the Notes to the Depository for use in a book entry system.

If any Depository determines not to continue to act as Depository for the Notes for use in a book entry system, the University and the Paying Agent may attempt to establish a securities depository/book entry relationship with another qualified Depository under this Resolution. If the University and the Paying Agent do not or are unable to do so, the University and the Paying Agent, after the Paying Agent has made provision for notification of the beneficial owners by the then Depository, shall permit withdrawal of the Notes from the Depository and authenticate and deliver Note certificates in fully registered form to the assigns of the Depository or its nominee, all at the cost and expense (including costs of printing definitive Notes), if the event is not the result of action or inaction by the University or the Paying Agent, of those persons requesting such issuance.

SECTION 10. This Resolution and the pledges and covenants of the Board made herein shall constitute a contract between the University and the owners of the Notes, and no alteration or variation of any of the provisions of this

Resolution, which shall have, in the opinion of the Treasurer, a material adverse effect on the then current holders of said Notes shall be made so long as any of said Notes remain outstanding and unpaid, except with the written consent of all of such owners.

SECTION 11. The officers of the University and of the Board are hereby authorized to take any and all action necessary or proper to comply with the terms of this Resolution and to effect timely delivery of the Notes, and to execute all necessary and appropriate certifications with respect to the Notes and the disposition of the proceeds of sale thereof.

SECTION 12. This Board hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

SECTION 13. The proper and appropriate officers of the Board and of the University, to the extent authorized by law, are hereby authorized to take such actions, and to execute and deliver appropriate closing certificates, and such other documents, certificates and statements, as may be required in connection with sale and delivery of the Notes. Without limiting the generality of the foregoing, the Treasurer and other appropriate officers of the University are hereby authorized to apply to the Ohio Board of Regents for any required approvals with respect to the Project or the Notes, and any such actions heretofore taken are hereby approved, ratified and confirmed. Should all the Project or the Notes not receive such approvals by the time the Notes are sold, the Treasurer shall set forth in the Certificate of Award the portions of the Project and the amount of Notes that have received such approvals. Thereupon, the Notes shall be issued in a principal amount not exceeding the amount approved by the Ohio Board of Regents and the Project shall include only the portions approved by the Ohio Board of Regents. In addition, the Treasurer is hereby authorized to enter into an agreement with the Paying Agent for its services if the Paying Agent is an entity other than the Treasurer.

SECTION 14. The Treasurer is hereby authorized to execute and deliver preliminary and final official statements on behalf of the University, in such forms as such officer may approve, and to deem such official statements to be "near final" and "final" for purposes of Securities and Exchange Commission Rule 15c2-12, if such officer determines that doing so is in the best interests of the University, such officer's execution thereof on behalf of the University to be conclusive evidence of such authorization, determination, approval and deeming, and copies thereof are

hereby authorized to be prepared and furnished to the Original Purchaser for distribution to prospective purchasers of the Notes and other interested persons.

The Treasurer on behalf of the University is hereby authorized to execute and deliver a continuing disclosure certificate or agreement dated as set forth in the Certificate of Award (the "Continuing Disclosure Certificate") in connection with the issuance of the Notes in such form as such officer may approve. The University hereby covenants and agrees that it will execute, comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Failure to comply with any such provisions of the Continuing Disclosure Certificate shall not constitute a default on the Notes; however, any holder or owner of the Notes may take such action as may be necessary and appropriate, including seeking specific performance, to cause the University to comply with its obligations under this paragraph and the Continuing Disclosure Certificate.

The Treasurer on behalf of the University is hereby authorized to furnish such information, to execute such instruments and to take such other actions in cooperation with the Original Purchaser as may be reasonably requested to qualify the Notes for offer and sale under the Blue Sky or other securities laws and regulations and to determine their eligibility for investment under the laws and regulations of such states and other jurisdictions of the United States of America as may be designated by the Original Purchaser; provided however, that the University shall not be required to register as a dealer or broker in any such state or jurisdiction or become subject to the service of process in any jurisdiction in which the University is not now subject to such service.

SECTION 15. The Notes are hereby designated as “qualified tax-exempt obligations” to the extent permitted by Section 265(b)(3) of the code. This Board finds and determines that the reasonable anticipated amount of qualified tax-exempt obligations (other than private activity bonds) which will be issued by the University during the calendar year in which the Notes are issued does not, and the Board hereby covenants that during such year, the amount of tax-exempt obligations issued by the University and designated as “qualified tax-exempt obligations” for such purpose will not, exceed \$10,000,000. The Treasurer and other appropriate officers, and any of them, are authorized to take such actions and give such certificates on behalf of the University with respect to the reasonably anticipated amount of tax-exempt obligations to be issued by the University during the calendar year in which the Notes are issued and with respect to such other matters as appropriate under Section 265(b)(3).

SECTION 16. This Resolution shall take effect and be in force from and after its adoption.

Adopted: December \_\_, 2005

W. Michael Fritz, Partner, and Lisa A. Plaga, Manager, of Deloitte & Touche LLP, External Auditors, presented their audit for FY 2004-05. Copies are filed with the official minutes and copies were distributed to all receiving agenda materials or were present.

Mr. Fritz prepared an additional handout on matters related to the audit and copies were distributed to those present. A copy is included with the official minutes.

Mr. Fritz reported a good working relationship with University personnel and stated there were no material weakness found and no reportable conditions identified. He noted the pending audit of the Intercollegiate Athletics and the Telecommunications Center remain. He then described the audit-scoped organization, discussed changes to the reporting of net assets, and adjustments to the financial statement as noted on page 5 of his handout.

Ms. Plaga noted changes in reporting best practices from their standpoint and thus a more extensive management letter. She reviewed and cited major financial and systems findings including the need to improve reporting to NSLDS student withdrawals.

When questioned about the status of business continuity and disaster recovery systems, it was determined this was a work in the early stages of development. Trustees noted their concern and asked for immediate attention to the matter and for a report on progress at the March 1 and 2, 2006 meetings.

Following discussion, and on a motion by Mr. Kidder and a second by Mr. Walter, Trustees voted unanimously to accept the audits as presented.

**2004-05 FY TREASURER'S AUDITED FINANCIAL  
STATEMENTS AND  
2004-05 FY AUDIT REPORT ON FEDERAL AWARDS IN  
ACCORDANCE WITH OMB CIRCULAR A-133**

**RESOLUTION 2005 - 2023**

**WHEREAS**, the Ohio University Board of Trustees has reviewed the fiscal year financial statements of the Treasurer, and audit reports,

**NOW THEREFORE, BE IT RESOLVED**, that the Ohio University Board of Trustees hereby accepts the Treasurer's Audited Financial Statements for fiscal year 2004-2005 ending June 30, 2005 and

**BE IT FURTHER RESOLVED**, that the Board hereby accepts Deloitte's Audit Report issued pursuant to OMB Circular A-133 for the fiscal year 2004-2005 ending June 30, 2005.



## **Executive Session**

The Ohio University Board of Trustees moved into Executive Session for purposes of meeting with the External Auditors as permitted by the Ohio Revised Code. Dr. Browning made the motion to go into executive session with a second by Mr. Kidder. On a roll call vote Dr. Browning, Mr. DeLawder, Dr. Dewire, Mr. Kidder, Mr. Schey, and Mr. Walter voted aye.

All Trustees present attended the session including President McDavis and Internal Auditor Gilmore.

The session reviewed the management letter, staffing levels, and continuity of recovery issues.

The Board returned to public session and adjourned at 6:40 p.m.

## ADJOURNMENT

The retreat adjourned at 6:40 p.m.

## CERTIFICATION OF SECRETARY

Notice of this meeting and its conduct was in accordance with Resolution 1975 – 240 of the Board, which resolution was adopted on November 5, 1975, in accordance with Section 121.22(F) of the Ohio Revised Code and of the State Administration Procedures Act.

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R. Gregory Browning  
Chairman

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Alan H. Geiger  
Secretary