

**BOARD OF REGENTS**  
*for*  
**KENTUCKY STATE UNIVERSITY**



**Special Called Meeting of the Board of Regents**

Wednesday, August 18, 2021

9:00 a.m.

2nd Floor Julian M. Carroll  
Academic Service Building  
Frankfort, Kentucky 40601

**KENTUCKY STATE UNIVERSITY BOARD OF REGENTS**

**Special Called Meeting of the Board of Regents**

**\*\*\* Meeting Will be Conducted In-Person and by Teleconference\*\*\***

**Wednesday, August 18, 2021**

**9:00 a.m.**

Board of Regents Room  
2nd Floor Julian M. Carroll Academic Services Building  
Frankfort, Kentucky 40601  
(Primary Physical Location)

**Zoom Link:** <https://kysu.zoom.us/j/99473882840>

**Webinar ID:** 994 7388 2840

**Phone One-Tap:** US: +13126266799,,99473882840# or +16468769923,,99473882840#

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**AGENDA**

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| <b>1. Call to Order</b>   | Regent Elaine Farris,<br>Chair  |
| <b>2. Roll Call</b>   | Elise Borne, Board Liaison  |
| <b>3. Adoption of the Agenda</b>  | Regent Elaine Farris  |
| <b>4. Election of Chair, Vice Chair<br/>and Secretary</b>                           | Regent Elaine Farris  |
| <b>5. Appointment of Greg Rush/CFO<br/>as Treasurer</b>                             | Regent Elaine Farris  |
| <b>6. Overview of the Executive Order<br/>Relating to Kentucky State University</b> | Dr. Aaron Thompson,<br>President of Council<br>on Postsecondary Education |
| <b>7. Information Items/University Updates</b>                                      |   |
| <i>A. Finances</i>  | Greg Rush, VP for Finance<br>and Administration/CFO                       |
| <i>B. Academic Affairs/Enrollment</i>   | Dr. Leroy Hamilton Jr.,<br>Provost/VP for Academic<br>Affairs             |

*C. Housing*

Dr. Pernella Deams, Interim  
VP for Student Engagement  
& Campus Life

*D. Athletics*

Ramon Johnson, Interim  
Athletic Director

*E. Institutional Advancement*

Tanya Carr, Interim VP for  
Brand Identity and  
University Relations

*F. President's Updates*

Clara Ross Stamps,  
Acting President

## **8. Action Items**

Greg Rush, VP for Finance  
and Administration/CFO

*A. Approval of Capital Plaza Hotel Contract*

*B. Approval of Best Western  
Parkside Inn Contract*

*C. Approval to Draw up to \$2,500,000  
from Revenue Anticipation Note*

*D. Approval to Amend Administrative Regulation  
745 KAR 1:035*

## **9. Adjournment**

Regent Elaine Farris

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**Kentucky State University Board of Regents**

**2021 Quarterly Meeting Dates**

September 2-3, 2021

December 2-3, 2021



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

## ACTION ITEM 8A

### **ACTION ITEM:**

Approval of Capital Plaza Hotel Contract

### **FACTS:**

The University is partnering with two (2) local vendors to provide supplemental student housing and low acuity student quarantine for fall 2021. Each hotel is within four (4) miles or less of the university's main campus. The university is providing shuttle service to/from hotels and campus for students. Each hotel is providing Wi-Fi to each room to support student learning.

### **BUDGETARY IMPLICATIONS:**

Capital Plaza Hotel

- Supplemental Student Housing for Fall 2021 Semester
- 56 Rooms over 2 floors – 1.5 miles from KSU
- \$49/night single or double occupancy
- Total Contract Amount: \$282,632, August 9 – November 19, 2021 (103 days)

### **RECOMMENDATION:**

Acting President Stamps recommends that the Board of Regents Approve the Capital Plaza Hotel Contract.

### **MOTION:**

Approve Capital Plaza Hotel Contract



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

## ACTION ITEM 8B

### **ACTION ITEM:**

Approval of Best Western Parkside Inn Contract

### **FACTS:**

The University is partnering with two (2) local vendors to provide supplemental student housing and low acuity student quarantine for fall 2021. Each hotel is within four (4) miles or less of the university's main campus. The university is providing shuttle service to/from hotels and campus for students. Each hotel is providing Wi-Fi to each room to support student learning.

### **BUDGETARY IMPLICATIONS:**

Best Western Parkside Inn Contract

- Supplemental Student Housing for Fall 2021 Semester  
(Low Acuity Student Quarantine, if needed)  
40 Rooms over 2 floors – 4 miles from KSU  
\$65/night single or double occupancy  
Total Contract Amount: \$267,800, August 9 – November 19, 2021 (103 days)

### **RECOMMENDATION:**

Acting President Stamps recommends that the Board of Regents approve the Best Western Parkside Inn Contract.

### **MOTION:**

Approve Best Western Parkside Inn Contract.



# KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

## ACTION ITEM 8C

### **ACTION ITEM:**

Approval of authority to draw up to \$2,500,000 from Revenue Anticipation Note.

### **FACTS:**

Kentucky State University has the power and authority, by legislation, to borrow money in any fiscal year in anticipation of the receipt of current revenues in the form of a Revenue Anticipation note from Fifth Third Bank pursuant to Kentucky's Short Term Borrowing Act (KRS 65.7701, et. seq.).

The Kentucky State University Board of Regents approved a Resolution at the Special Called Board Meeting of July 8, 2021 authorizing the issuance of a revenue anticipation note (the "Note") in the maximum amount of \$5,000,000 for the purpose of paying operating expenses of Kentucky State University during its fiscal year ending June 30, 2022.

### **BUDGETARY IMPLICATIONS:**

If drawn upon, Kentucky State University would need to repay the Note by June 30, 2022 and would pay Fifth Third interest at a variable interest rate per annum set forth in the Note (such interest rate to be based upon a published index or indices plus a credit spread not to exceed 10%) on the outstanding principal in addition to a fee.

### **RECOMMENDATION:**

Acting President Stamps recommends that the Board of Regents approve authority to draw up to \$2,500,000 from Revenue Anticipation Note.

### **MOTION:**

Approve authority to draw up to \$2,500,000 from Revenue Anticipation Note.

## 2022 REVENUE ANTICIPATION NOTE

Issuance Date: July 26, 2021  
Maturity Date: June 30, 2022  
Interest Rate: Variable, as described herein  
Outstanding Principal Amount: See Annex A  
Maximum Principal Amount: \$5,000,000

Section 1 -- Promise To Pay. KENTUCKY STATE UNIVERSITY, a public body corporate and an educational institution and agency of the Commonwealth of Kentucky with a notice address of 400 East Main Street, Frankfort, Kentucky 40601 (hereinafter, together with any permitted successor or other obligor, referred to as the "Governmental Agency") for value received and intending to be legally bound, hereby acknowledges itself indebted and promises to pay to the order of FIFTH THIRD BANK, NATIONAL ASSOCIATION, a federally chartered institution located at 250 West Main Street, Suite 100, Lexington, Kentucky 40507 for itself and as agent for any affiliate of Fifth Third Bancorp (together with its successors and assigns, the "Registered Owner") the Outstanding Principal Amount set forth above, on the Maturity Date hereof, at the designated corporate office of the Registered Owner upon presentation and surrender of this Note, and to pay interest thereon from the Issuance Date as set forth herein.

Section 2 -- Principal Advances. The Registered Owner, at the request of the Governmental Agency, shall loan available amounts hereunder to the Governmental Agency such amounts as may from time to time be requested by the Governmental Agency provided that:

- (a) the sum of all principal amounts advanced at any one time hereunder shall not exceed the Maximum Principal Amount;
- (b) the sum of all principal amounts advanced and re-advanced hereunder since the Issuance Date shall not exceed \$37,491,514;
- (c) there shall be no Defaults or Events of Default under this Note or any applicable Rate Management Agreement or Rate Management Obligations at the time of any request for such advance by the Governmental Agency;
- (d) the representations and warranties of the Governmental Agency made in this Note shall be true and correct on the date of each advance with the same effect as if made on such date; and
- (e) all costs and expenses of the Registered Owner are paid as due pursuant to the terms of this Note.

The acceptance by the Governmental Agency of the proceeds of each advance shall be deemed to constitute a representation and warranty by the Governmental Agency that the conditions in this Section 2, other than those that have been waived in writing by the Registered Owner, have been satisfied.

The outstanding balance of this Note shall appear on a supplemental bank record and is not necessarily the amount shown on Annex A, which record shall evidence the balance due pursuant to this Note at any time.

Section 3 -- Unused Commitment Fee. The Governmental Agency shall pay to the Registered Owner an unused commitment fee (the "Unused Commitment Fee") in the amount of 0.10% (10 basis points) per annum on any unused amount of the Loan, which Unused Commitment Fee shall be payable quarterly on the first Business Day of each January, April, July, and October for as long as this Note is unpaid and outstanding. The amount of such Unused Commitment Fee shall be calculated quarterly by the Registered Owner as of the last day of each calendar quarter that this Note is outstanding. If this Note is prepaid before the Maturity Date or the Maturity Date of this Note ends on a date that is before the first Business Day of the last quarterly payment date, the Governmental Agency shall pay to the Registered Owner the final Unused Commitment Fee in an amount, determined by the Registered Owner, as of such prepayment date or such the Maturity Date, as applicable.

Section 4 -- Interest Accrual.

(a) Interest on the Loan shall accrue on the outstanding principal balance of this Note commencing on the date of the initial disbursement of the Loan until the Loan has been fully paid and satisfied in cash.

(b) Interest on all LIBOR Rate Loans shall be calculated based on a 360-day year and charged for the actual number of days elapsed.

(c) If the Prime Rate is selected as a successor interest rate pursuant to Section 4(h) below, interest shall be calculated based on a 360-day year and charged for the actual number of days elapsed.

(d) Subject to the terms hereof, the outstanding principal balance of this Note shall bear interest at the Adjusted LIBOR Rate.

(e) The Governmental Agency shall have the right on any Business Day to request the Registered Owner to provide a good faith estimate of the then current LIBOR Rate quotation and the Registered Owner shall promptly provide such estimate.

(f) The Adjusted LIBOR Rate (i) shall initially be determined as of the date of the initial disbursement, and (ii) shall adjust automatically on the first calendar day of each calendar month thereafter (each of the foregoing being a "LIBOR Adjustment Date"). Any change in the Adjusted LIBOR Rate resulting from a change in the LIBOR Rate shall become effective as of each such LIBOR Adjustment Date in accordance with this Note and the Registered Owner's loan systems and procedures periodically in effect. The Registered Owner shall not be required to notify the Governmental Agency of any adjustment in the LIBOR Rate; however, the Governmental Agency may request a quote of the prevailing LIBOR Rate on any Business Day.

(g) If the Prime Rate is selected as the successor interest rate pursuant to Section 4(h) hereof, the Prime Rate shall adjust automatically with each change in the



Prime Rate occurring thereafter. Any change in the Prime Rate shall become effective as of the date of each change in the Prime Rate in accordance with the Registered Owner's loan systems and procedures periodically in effect. The Registered Owner shall not be required to notify the Governmental Agency of any adjustment in the Prime Rate; however, the Governmental Agency may request a quote of the prevailing Prime Rate on any Business Day.

(h) Unavailability of LIBOR.

(i) Temporary Inability. If, prior to any LIBOR Adjustment Date, the Registered Owner shall determine that (A) deposits in Dollars (in the applicable amounts) are not being offered to it in the London Interbank Offered Rate market for such LIBOR Adjustment Date, (B) by reason of circumstances affecting the London Interbank Offered Rate Market adequate and reasonable methods do not exist for ascertaining the LIBOR Rate, (C) the LIBOR Rate as determined by the Registered Owner will not adequately and fairly reflect the cost to the Registered Owner of making, funding, or maintaining advances under this Note bearing interest with reference to the LIBOR Rate on such LIBOR Adjustment Date, or (D) the making or funding of this Note with reference to the LIBOR Rate becomes impracticable, then, the Registered Owner shall promptly provide notice of such determination to the Governmental Agency (which shall be conclusive and binding on the Governmental Agency), and (Y) this Note will automatically, on such LIBOR Adjustment Date, bear interest a rate per annum equal to: (1) the Prime Rate, plus (2) such applicable margin (whether it be a positive adder or a negative adder) as reasonably determined by the Registered Owner, and (Z) the obligation of the Registered Owner to calculate interest hereunder at the LIBOR Rate shall be suspended until the Registered Owner determines that the circumstances giving rise to such suspension no longer exist, in which event the Registered Owner shall so notify the Governmental Agency.

(ii) Benchmark Replacement Setting. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 4(h)(ii) ("Section")):

(A) Replacing USD LIBOR. On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of USD LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month, and 12-month USD LIBOR tenor settings. If the then-current Benchmark is USD LIBOR, on the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the transition date set forth in the Benchmark Transition Notice in the case of an Early Opt-in Election, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document

in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Note or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR or Daily Compounded SOFR, all interest payments will be payable on a monthly basis.

(B) Replacing Other Benchmarks. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the sixth Business Day after the date the Benchmark Transition Notice is provided to the Registered Owner, or such later date as is set forth in the Benchmark Transition Notice, without any amendment to, or further action or consent of any other party to, this Note or any other Loan Document so long as the Registered Owner has not received within five Business Days (or longer time as set forth in the Benchmark Transition Notice) written notice of objection to such Benchmark Replacement from the Governmental Agency, or such later date as is set forth in the Benchmark Transition Notice, without any amendment to this Note or any other Loan Document, or further action or consent of the Governmental Agency.

At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Governmental Agency may revoke any request for a borrowing of, conversion to, or continuation of Loans to be made, converted, or continued that would bear interest by reference to such Benchmark until the Governmental Agency's receipt of notice from the Registered Owner that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Governmental Agency will be deemed to have converted any such request into a request for a borrowing of or conversion to the Prime Rate. During the period referenced in the foregoing sentence, the component of the Prime Rate based upon the Benchmark will not be used in any determination of the Prime Rate.

(C) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Registered Owner will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Note.

(D) Notices; Standards for Decisions and Determinations. The Registered Owner will promptly notify the Governmental Agency of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision, or election that may be made by the Registered Owner pursuant to this Section, including any determination with respect to a tenor, rate, or adjustment or of the occurrence or non-occurrence of an event, circumstance, or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section.

(E) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR, USD LIBOR, or an Alternative Benchmark Rate), then the Registered Owner may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Registered Owner may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(F) Limitation of Liability. The Registered Owner does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, or any other matter related to LIBOR or any alternative, successor, or replacement rate, including, without limitation, the implementation of any Benchmark Replacement or any Benchmark Replacement Conforming Changes or whether the composition or characteristics of any alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, LIBOR or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

(i) Rounding and Rate Management Agreement. At any time during which a Rate Management Agreement is then in effect with respect to this Note, the provisions contained in this Note which round up the LIBOR Rate to the nearest 1/8<sup>th</sup> shall be disregarded and no longer of any force and effect, notwithstanding anything to the contrary contained in this Note.

Section 5 -- Interest Payments. Interest accrued on the outstanding principal balance outstanding hereunder from time to time shall be payable on the each Interest Payment Date beginning on (and including) the Initial Interest Payment Date and ending on (and including) the Final Interest Payment Date. Interest payable on each Interest Payment Date shall include interest accrued on the principal balance outstanding hereunder at the Interest Rate for the immediately preceding Interest Period.

Section 6 -- Principal Payment. The entire principal balance, together with all accrued and unpaid interest and any other charges, advances, and fees, if any, outstanding hereunder, shall be due and payable in full on the earlier of the Maturity Date or upon acceleration of this Note notwithstanding any other inconsistent or contradictory provisions contained herein. The outstanding principal balance of this Note may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon five days prior written notice to the Registered Owner. If a successor interest rate is selected pursuant to Section 4(h) hereof, any prepayment shall be subject to the Registered Owner's then-current requirements and procedures.

Section 7 -- Late Payments; Default Rate; Fees. If any payment is not paid when due (whether by acceleration or otherwise) or within ten days thereafter, undersigned agrees to pay to the Registered Owner a late payment fee equal to 5% of the payment amount with a minimum fee of \$20.00. After an Event of Default, the Governmental Agency agrees to pay to the Registered Owner a fixed charge of \$25.00, or the Governmental Agency agrees that the Registered Owner may, without notice, increase the Interest Rate by three percentage points (the "Default Rate"), whichever is greater (provided that the Default Rate may not exceed the highest interest rate permitted by applicable law). The Registered Owner may impose a non-sufficient funds fee for any check that is presented for payment that is returned for any reason. In addition, the Registered Owner may charge loan documentation fees as may be reasonably determined by the Registered Owner.

Section 8 -- Representations and Warranties. The Governmental Agency hereby warrants and represents to the Registered Owner for the purpose of inducing the Registered Owner to make the Loan, the following:

(a) The Governmental Agency is a validly existing public body corporate and an agency and instrumentality and public educational institution of the Commonwealth of Kentucky with full power to own its properties and conduct its affairs.

(b) The Resolution has been duly and properly adopted by the Governmental Agency and this Note has been duly authorized, executed and delivered by the Governmental Agency and is a valid and binding obligation of the Governmental Agency enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by equitable principles and by bankruptcy, reorganization, moratorium, insolvency or similar laws heretofore or hereafter enacted relating to or affecting the enforcement of creditors' rights or remedies generally.

(c) The Governmental Agency has all necessary power and authority to adopt the Resolution and to perform and consummate all transactions contemplated thereby, and to execute and deliver the documents and instruments to be executed and delivered by it in connection with the issuance of this Note.

(f) The issuance of this Note does not and will not conflict with, violate or constitute a default under any court or administrative order, decree or ruling, or any law, statute, order, resolution or regulation, or any agreement, indenture, mortgage, lease, note or other obligation or instrument, binding upon the Governmental Agency, or any of its properties or assets, and the Governmental Agency has obtained each and every

authorization, consent, permit, approval or license of, or filing or registration with (other than filings related to securities laws, if any), any court or governmental department, commission, board, bureau, agency or instrumentality, or any specifically granted exemption from any of the foregoing, that is necessary to the valid execution and delivery of this Note.

(h) There is no action, suit, proceedings or investigation at law or in equity before any court, public board or body pending or threatened against, affecting or questioning (i) the valid existence of the Governmental Agency, (ii) the right or title of the members and officers of the Governmental Agency to their respective positions, (iii) the authorization, execution, delivery, or enforceability of this Note or the application of any monies or security therefor, or (iv) that would have a material adverse impact on the ability of the Governmental Agency to perform its obligations under this Note or the Resolution.

(i) The Governmental Agency and all individuals or entities that, along with the Governmental Agency, would be treated as a single employer under ERISA or the Internal Revenue Code of 1986, as amended (an "ERISA Affiliate"), are in compliance with all of its obligations to contribute to any "employee benefit plan" as that term is defined in Section 3(3) of ERISA. The Governmental Agency and each of its ERISA Affiliates are in full compliance with ERISA, and there exists no event described in Section 4043(b) thereof ("Reportable Event").

(j) All Financial Statements and information relating to the Governmental Agency that have been or may hereafter be delivered by the Governmental Agency to the Registered Owner are true and correct. The Governmental Agency has no material obligations or liabilities of any kind not disclosed in that financial information, and there has been no material adverse change in the financial condition of the Governmental Agency nor has the Governmental Agency suffered any damage, destruction, or loss which has adversely affected its business or assets since the submission of the most recent financial information to the Registered Owner.

(k) The Governmental Agency is Solvent and upon consummation of the transactions contemplated herein will be Solvent. "Solvent" means that (i) the total amount of the Governmental Agency's assets (excluding accumulated depreciation) is in excess of the total amount of its liabilities (including contingent liabilities), at a fair valuation; (b) the Governmental Agency does not have unreasonably small capital for the business and transactions in which the Governmental Agency is engaged or is about to engage; and (c) the Governmental Agency does not intend to or believe it will incur obligations beyond its ability to pay as they become due.

(l) No part of the Loan from the Registered Owner shall be used to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any margin stock. If requested by the Registered Owner, the Governmental Agency shall furnish to the Registered Owner statements in conformity with the requirements of Federal Reserve Form U-1.

Section 9 -- Covenants.

(a) Affirmative Covenants. The Governmental Agency agrees that from the date of execution of this Note until the Obligations have been fully paid it will:

(i) Access to Business Information. The Governmental Agency shall maintain proper books of accounts and records and enter therein complete and accurate entries and records of all of its transactions in accordance with generally accepted accounting principles and give representatives of the Registered Owner access thereto at all reasonable times, including permission to (1) examine, copy, and make abstracts from any such books and records and such other information which might be helpful to the Registered Owner in evaluating the status of the Obligations as it may reasonably request from time to time, and (2) communicate directly with the Governmental Agency's officers, employees, agents, accountants, or other financial advisors with respect to the business, financial condition, and other affairs of the Governmental Agency.

(ii) Condition and Repair. The Governmental Agency shall maintain its facilities and equipment used in the operation of its business in good repair and working order and shall make all appropriate repairs, improvements, and replacements thereof so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

(iii) Insurance. The Governmental Agency shall maintain insurance against fire, theft, and other casualty on the Governmental Agency's insurable real and personal property in such amounts as are commercially reasonable (but in any event, such insurance shall not be less than the outstanding principal amount of the Loan), and maintain insurance against liability on account of damage to persons or property and as required under all workers' compensation laws.

(iv) Taxes. The Governmental Agency shall pay when due all taxes, assessments, and other governmental charges imposed upon it or its assets, franchises, business, income, or profits before any penalty or interest accrues thereon (provided, however, that extensions for filing and payment of such taxes shall be permitted hereunder if disclosed to and consented to by the Registered Owner), and all claims (including without limitation claims for labor, services, materials, and supplies) for sums which by law might be a lien or charge upon any of its assets, provided that (unless any material item or property would be lost, forfeited or materially damaged as a result thereof) no such charge or claim need be paid if it is being diligently contested in good faith, if the Registered Owner is notified in advance of such contest and if the Governmental Agency establish an adequate reserve or other appropriate provision required by generally accepted accounting principles and deposits with the Registered Owner cash or bond in an amount acceptable to the Registered Owner.

(v) Compliance with Laws. The Governmental Agency shall comply with all federal, state, and local laws, regulations and orders applicable to the

Governmental Agency or its assets including without limitation all Environmental Laws, in all respects material to the Governmental Agency's business, assets or prospects and shall immediately notify the Registered Owner of any violation of any rule, regulation, statute, ordinance, order or law relating to the public health or the environment and of any complaint or notifications received by the Governmental Agency regarding any environmental or safety and health rule, regulation, statute, ordinance, or law. The Governmental Agency shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights, or other rights necessary for the ownership of its properties and the advantageous conduct of its business and as may be required from time to time by applicable law.

(vi) Notice of Default. The Governmental Agency shall, within ten days of its knowledge thereof, give written notice to the Registered Owner of (1) the occurrence of any event or the existence of any condition which would be, after notice or lapse of applicable grace periods, an Event of Default, and (2) the occurrence of any event or the existence of any condition which would prohibit or limit the ability of any the Governmental Agency to reaffirm any of the representations or warranties, or to perform any of the covenants, set forth herein.

(vii) Costs. The Governmental Agency shall reimburse the Registered Owner for any and all reasonable fees, costs and expenses including without limitation reasonable Attorneys' Fees, other professionals' fees, expert fees, court costs, litigation, and other expenses (collectively, the "Costs") incurred or paid by the Registered Owner or any of its officers, employees or agents in connection with: (1) the preparation, negotiation, procurement, review, administration or enforcement of the Loan Documents, Rate Management Agreements, Rate Management Obligations, or any instrument, agreement, document, policy, consent, waiver, subordination, release of lien, termination statement, satisfaction of mortgage, financing statement, or other lien search, recording, or filing related thereto (or any amendment, modification, or extension to, or any replacement or substitution for, any of the foregoing), whether or not any particular portion of the transactions contemplated during such negotiations is ultimately consummated, and (2) the defense, preservation, and protection of the Registered Owner's rights and remedies thereunder, including without limitation, its security interest in any property pledged to secure Obligations, if any, whether incurred in bankruptcy, insolvency, foreclosure, or other litigation or proceedings or otherwise. The Costs shall be due and payable upon demand by the Registered Owner. If the Governmental Agency fails to pay the Costs when upon such demand, the Registered Owner is entitled to disburse such sums as Obligations. Thereafter, the Costs shall bear interest from the date incurred or disbursed at the highest rate set forth in this Note. This provision shall survive the termination of this Note or the repayment of any amounts due or the performance of any Obligation.

(viii) Other Amounts Deemed Loans. If the Governmental Agency fails to pay any tax, assessment, governmental charge, or levy or to maintain insurance within the time permitted or required by this Note, or to comply with any other

Obligation, the Registered Owner may, but shall not be obligated to, pay, satisfy, discharge, or bond the same for the account of the Governmental Agency. To the extent permitted by law and at the option of the Registered Owner, all monies so paid by the Registered Owner on behalf of the Governmental Agency shall be deemed Obligations and the Governmental Agency's payments under this Note may be increased to provide for payment of such Obligations plus interest thereon.

(ix) Compliance with Mortgages and Liens. The Governmental Agency shall at all times comply with all terms, covenants, and provisions contained in any mortgages or instruments evidencing any Liens at any time existing upon its property or any part thereof securing any of its indebtedness and pay or cause to be paid, or to be renewed, refunded, or extended or to be taken up, by it, all bonds, notes, or other evidences of indebtedness secured by any such mortgage or lien, as and when the same shall become due and payable to the extent that the failure to so comply, pay, renew, refund, or extend would materially and adversely affect the consolidated or combined operations, revenues, or financial condition of the Governmental Agency.

(x) Further Assurances. The Governmental Agency shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other action, as shall be reasonably necessary from time to time to give full effect to the Loan Documents and the transactions contemplated thereby.

(xi) Financial Statements and Reporting Requirements. The Governmental Agency hereby covenants to provide the Registered Owner or cause to be provided to the Registered Owner the annual Financial Statements of Governmental Agency not later than one hundred twenty (120) days after the close of each fiscal year (commencing with fiscal year ending June 30, 2021), and financial reports, including, but not limited to, a balance sheet as at the close of each such fiscal year, a statement of support, revenue, and expenses, changes in fund balances, and functional expenses for each such fiscal year, such other comments and financial details as are usually included in similar reports. Such reports for the Governmental Agency shall be prepared on an audited basis in accordance with generally acceptable accounting principles consistently applied by independent certified public accountants selected by the Governmental Agency and reasonably acceptable to the Registered Owner and shall contain unqualified opinions as to the fairness of the statements therein contained.

(xii) Required Rest Period. The Governmental Agency shall pay all principal outstanding hereunder and draw no further principal for thirty (30) consecutive days at least once while this Note is outstanding (the "Rest Period"), provided however, that such Rest Period shall occur after the Governmental Agency has requested an initial advance of principal hereunder.



(xii) Deposit and Treasury Management Services. The Governmental Agency shall maintain all Deposit and Treasury Management Services with the Registered Owner for so long as any Obligation is owed to the Registered Owner.

(b) Negative Covenants. The Governmental Agency covenants and agrees that from the date of execution of this Note until all Obligations (including without limitation this Note) have been fully paid, it will not:

(i) Patriot Act. (1) Be or become subject at any time to any law, regulation, or list of any government agency (including without limitation the U.S. Office of Foreign Asset Control list) that prohibits or limits the Registered Owner from making any advance or extension of credit to the Governmental Agency or from otherwise conducting business with the Governmental Agency, or (2) fail to provide documentary and other evidence of Governmental Agency's identity as may be requested by the Registered Owner at any time to enable the Registered Owner to verify Governmental Agency's identity or to comply with any applicable law or regulation, including without limitation Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

#### Section 10 -- Events of Default and Remedies.

The occurrence of any of the following events will be deemed to be an "Event of Default" under this Note: (i) the nonpayment of any principal, interest or other indebtedness under this Note when due; (ii) the occurrence of any event of default or any default and the lapse of any notice or cure period, or the Governmental Agency's failure to observe or perform any covenant or other agreement, under or contained in any document evidencing or securing any debt, liability, or obligation of the Governmental Agency to the Registered Owner; (iii) the filing by or against the Governmental Agency of any proceeding in bankruptcy, receivership, insolvency, reorganization, liquidation, conservatorship or similar proceeding (and, in the case of any such proceeding instituted against the Governmental Agency, such proceeding is not dismissed or stayed within thirty days of the commencement thereof, provided that the Registered Owner shall not be obligated to advance additional funds hereunder during such period); (iv) any assignment by the Governmental Agency for the benefit of creditors, or any levy, garnishment, attachment or similar proceeding is instituted against any property of the Governmental Agency held by or deposited with the Registered Owner as security for any obligation of the Governmental Agency; or (v) a default with respect to any other indebtedness of the Governmental Agency for borrowed money, if the effect of such default is to cause or permit the acceleration of such debt.

Upon the occurrence of an Event of Default: (a) the Registered Owner shall be under no further obligation to make advances hereunder; (b) if an Event of Default specified in clause (iii) or (iv) above shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder shall be immediately due and payable without demand or notice of any kind; (c) if any other Event of Default shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder, at the Registered Owner's option and without demand or notice of any kind, may be accelerated and become immediately due and payable; (d) at the Registered Owner's option, this Note will bear interest at the Default Rate from the date of the occurrence of the Event of Default;

and (e) the Registered Owner may exercise from time to time any of the rights and remedies available hereunder or under applicable law.

Section 12 -- Notices. Any notices under or pursuant to this Note shall include the Governmental Agency's name, the loan number and the Effective Date of this Note and shall be deemed duly sent when delivered in hand or when mailed by registered or certified mail, return receipt requested, addressed as follows:

To the Governmental Agency:

Kentucky State University  
400 East Main Street  
Frankfort, Kentucky 40601  
Attention: Acting President and Chief  
Financial Officer

To the Registered Owner:

Fifth Third Bank, National Association  
250 West Main Street  
Suite 100  
Lexington, Kentucky 40507  
Attn: John Shasky

With a copy to:

Dinsmore & Shohl LLP  
101 South Fifth Street  
Suite 2500  
Louisville, Kentucky 40202  
Attention: Mark S. Franklin

Any party may change such address by sending notice of the change to the other party.

Section 13 -- Authority. This Note is issued under and pursuant to §§ 65.7703 to 65.7721, inclusive, of the Kentucky Revised Statutes (the "Act"). The indebtedness evidenced hereby is a borrowing in anticipation of current revenues to be received by the Governmental Agency during the fiscal year in which this Note has been issued and is to be repaid from such revenues once received.

Section 14 -- Revenue Pledge. In order to secure the payment of the principal indebtedness evidenced hereby and the interest hereon, the Governmental Agency hereby pledges and grants (equally and ratably with all other revenue anticipation notes issued by the Governmental Agency for the current fiscal year) to the Registered Owner of this Note, a lien and charge on, and security interest in, its current revenues to be received during the period when this Note is outstanding, subject and subordinate only to the pledge of, and security interest in, current revenues constituting General Receipts (as defined in the Trust Agreement hereinafter defined) granted for the benefit of the holders of obligations issued under the provisions of a certain Trust Agreement dated as of March 1, 2007, as amended and supplemented (collectively, the "Trust Agreement") between the Governmental Agency and U.S. Bank National Association (the "Bond Trustee").

This Note is executed and delivered pursuant to the Resolution adopted by the Governmental Agency upon the affirmative vote of at least a majority of the members of its

Governing Body at a public meeting duly and regularly held, and after filing proper notice with the State Local Debt Officer of the Commonwealth of Kentucky.

Section 15 -- Limited Liability of Officials of the Governmental Agency. No recourse shall be had for the payment of the principal of or the interest on this Note, or for any claim based hereon, against any officer, agent or employee, past, present or future, of the Governmental Agency, as such, either directly or through the Governmental Agency, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise; all such liability of such officers, agents or employees is hereby renounced, waived and released as a condition of and as consideration for the issuance, execution and acceptance of this Note.

Section 16 -- USA Patriot Act.

(a) The Governmental Agency hereby acknowledges that it seeks to comply with all applicable laws concerning money laundering and related activities. In furtherance of those efforts, the Governmental Agency hereby represents, warrants, and agrees that, to the best of its knowledge based upon appropriate diligence and investigation:

(i) none of the cash or property that the Governmental Agency has paid, will pay or will contribute has been or shall be derived from, or related to, an activity that is deemed criminal under United States law; and

(ii) no contribution or payment by the Governmental Agency to the Registered Owner shall cause the Registered Owner to be in violation of the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, or the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001.

(b) The Governmental Agency agrees to promptly notify the Registered Owner if any of these representations cease to be true and accurate regarding the Governmental Agency. The Governmental Agency agrees to provide to the Registered Owner any additional information regarding the Governmental Agency that the Registered Owner deems necessary or appropriate to ensure compliance with all applicable laws concerning money laundering and similar activities.

(c) The Governmental Agency agrees that, if at any time, the Registered Owner determines that any of the foregoing representations are incorrect with respect to the Governmental Agency, or if otherwise required by applicable law or regulation related to money laundering and similar activities, the Registered Owner may undertake whatever actions it considers appropriate to ensure compliance with applicable law or regulations.

(d) The Governmental Agency further agrees that the Registered Owner may release confidential information about the Governmental Agency and, if applicable, any of its owners, legal or beneficial, to proper authorities if the Registered Owner, in its sole discretion, determines that it is in the best interests of the Registered Owner in light of relevant rules and regulations under the laws described in this Section.

(e) USA Patriot Act Notification. The following notification is provided to the Governmental Agency pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. When a Governmental Agency opens an account, if a Governmental Agency is an individual, the applicable bank will ask for the Governmental Agency's name, taxpayer identification number, residential address, date of birth and other information that will allow such bank to identify the Governmental Agency, and, if the Governmental Agency is not an individual, such bank will ask for the Governmental Agency's name, taxpayer identification number, business address, and other information that will allow such bank to identify the Governmental Agency. The bank may also ask, if the Governmental Agency is an individual, to see the Governmental Agency's driver's license or other identifying documents, and, if the Governmental Agency is not an individual, to see the Governmental Agency's legal organizational documents or other identifying documents.

(f) No portion of the facilities of the Governmental Agency has been purchased by the Governmental Agency or improved, equipped, or furnished by the Governmental Agency with proceeds of any illegal activity nor will the Governmental Agency accept any proceeds of any illegal activity as consideration for a sale of any facilities owned or operated by the Governmental Agency. The Governmental Agency, to the best of its knowledge, after having made diligent inquiry, represents and warrants that (a) the Governmental Agency, (b) each property manager (if any), and (c) each licensee or other user of facilities owned or operated by the Governmental Agency (i) is not currently identified on the OFAC List, and (ii) is not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. The Governmental Agency has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

Section 17 -- Definitions. All capitalized terms used herein and not expressly defined herein shall have the meanings set forth for them below. All financial terms used in this Note, other than those defined in this Note, shall have the meanings given to them by generally accepted accounting principles.

“Act” has the meaning provided in Section 13 hereof.

“Adjusted LIBOR Rate” means a floating rate per annum equal to the then applicable LIBOR Rate plus one hundred forty-five (145) basis points.

“Affiliate” means any Person which (a) directly or indirectly controls or is controlled by, or is under common control with, one or more of the Governmental Agency or any Affiliate or (b) is a supporting organization, as such term is used in connection with Section 509(a)(3) of the Code, of one or more of the Governmental Agency or an Affiliate. For the purposes of this definition, “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of one or more of the Governmental Agency, or of the Person, whether through stock ownership, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, or by contract or otherwise.

“Attorneys’ Fees” means the reasonable value of the services (and all costs and expenses related thereto) of the attorneys (and all paralegals and other staff employed by such attorneys) employed by the Registered Owner from time to time to: (a) take any action in or with respect to any suit or proceedings (bankruptcy or otherwise) relating to this Note; (b) enforce any of the Registered Owner’s rights to collect any of the Obligations; (c) give the Registered Owner advice with respect to this Note, including without limitation advice in connection with any default, workout, or bankruptcy, and (d) prepare any amendments, restatements, amendments, or waivers to this Note or any of the documents executed in connection with any of the Obligations.

“Alternative Benchmark Rate” means the alternative selected by the Registered Owner from those set forth below:

- (i) BSBY,
- (ii) AMERIBOR,
- (iii) Bank Yield Index,
- (iv) IHS Markit Credit Rate, or
- (v) Other term rate,

provided that, if the Governmental Agency has a Swap Agreement in effect with respect to all or part of the Loan, in order to more closely align the floating interest rate under the Loan with the floating rate option under the Swap Agreement, the Registered Owner may, in its discretion, replace the relevant alternative rate set forth above with Daily Compounded SOFR;

provided further that, in all events, the relevant alternative (a) is displayed on a screen or other information service selected by the Registered Owner in its reasonable discretion; (b) is administratively feasible for the Registered Owner; (c) the applicable benchmark administrator publishes, publicly announces, or states publicly that such benchmark is administered in accordance with the International Organization of Securities Commission’s Principles for Financial Benchmarks; and (d) is identified as the operative rate in at least five then-outstanding Dollar-denominated syndicated credit facilities (as a result of amendment or as originally executed) (and such credit facilities are identified in

the written notice of the selection of the alternative rate provided by the Registered Owner to the Governmental Agency and are publicly available for review).

“AMERIBOR” means, for the corresponding tenor, the term AMERIBOR benchmark interest rate as provided by American Financial Exchange, LLC as administrator of the benchmark (or a successor administrator) to, and published by, authorized distributors of AMERIBOR, as selected in the sole discretion of the Registered Owner.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Note as of such date.

“Bank Yield Index” means, for the corresponding tenor, the Bank Yield Index as provided by the ICE Benchmark Administration as administrator of the benchmark (or a successor administrator).

“Benchmark” means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to this Section titled “Benchmark Replacement Setting,” then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means, for any Available Tenor:

(1) For purposes of clause (a) of this Section, the first alternative set forth below that can be determined by the Registered Owner:

(A) the sum of: (i) Term SOFR and (ii) the Benchmark Replacement Adjustment;

(B) the sum of: (i) Daily Simple SOFR and (ii) the Benchmark Replacement Adjustment;

provided that, giving due consideration to any recommendation of the Relevant Government Body and to evolving market practices and standards, the Registered Owner may, in its discretion, replace the Benchmark Replacement in paragraph (A) or (B) above in this definition with the sum of (i) the Alternative Benchmark Rate and (ii) the Benchmark Replacement Adjustment; provided further that, in such event, the Registered Owner shall provide written notice of such election to the Governmental Agency prior to the replacement of USD LIBOR; and

(2) For purposes of clause (b) of this Section, the sum of (A) the benchmark rate set forth in the Benchmark Transition Notice and (B) the Benchmark Replacement Adjustment;

Notwithstanding anything to the contrary herein, if the Benchmark Replacement as determined pursuant to any clause in this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Note and the other Loan Documents.

Further, if the Benchmark interest rate to be replaced is rounded upwards to the next 1/8<sup>th</sup> of 1% under the terms of this Note or any Loan Document, the Benchmark Replacement shall also be rounded up to the next 1/8<sup>th</sup>; provided further that this provision governing rounding shall not apply if the Governmental Agency has a Swap Agreement in effect with respect to all or part of Loan.

“Benchmark Replacement Adjustment” means (i) in the case of Term SOFR, a spread adjustment in the amount of 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-month’s duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, and 0.71513% (75.513 basis points) for an Available Tenor of one-year’s duration; provided, that if the current Benchmark being replaced by Term SOFR is Daily Simple SOFR or Daily Compounded SOFR and a Benchmark Replacement Adjustment was applied to the current Benchmark, no additional Benchmark Replacement Adjustment shall be applied; (ii) in the case of Daily Simple SOFR, a spread adjustment in the amount of 0.11448% (11.448 basis points) if interest is required to be paid monthly, 0.26161% (26.161 basis points) if interest is required to be paid quarterly, 0.42826% (42.826 basis points) if interest is required to be paid semi-annually, and 0.71513% (75.513 basis points) if interest is required to be paid annually; (iii) in the case of Daily Compounded SOFR, the spread adjustment that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions; and, (iv) in all other cases, a spread adjustment (which may be a positive or negative value or zero) that has been selected by the Registered Owner for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market conventions, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated or bilateral credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods or observation shifts, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Registered Owner decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Registered Owner in a manner substantially consistent with market practice (or, if the Registered Owner decides that adoption of any portion of such market practice is not administratively feasible or if the Registered Owner determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Registered Owner decides is reasonably necessary in connection with the administration of this Note and the other Loan Documents).

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than USD LIBOR, (i) the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark, or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored; or (ii) the election by the Registered Owner to replace the then-current Benchmark, if such Benchmark is Daily Simple SOFR or Daily Compounded SOFR, with Term SOFR.

“Benchmark Transition Notice” means, written notice by the Registered Owner to the Governmental Agency of the implementation of a Benchmark Replacement as the result of a Benchmark Transition Event or an Early Opt-in Election, including the date on which such transition shall occur.

“Bond Trustee” has the meaning provided in Section 14 hereof.

“BSBY” means, for the corresponding tenor, the Bloomberg Short-Term Bank Yield Index provided by Bloomberg Index Services Limited as administrator of the benchmark (or a successor administrator).

“Business Day” means any day other than a Saturday, Sunday, federal holiday or other day on which the New York Stock Exchange is regularly closed. (i) with respect to all notices and determinations in connection with the LIBOR Rate, any day (other than a Saturday or Sunday) on which commercial banks are open in London, England, New York, New York, and Cincinnati, Ohio for dealings in deposits in the London Interbank Market; and (ii) in all other cases, any day on which commercial banks in Cincinnati, Ohio are required by law to be open for business; provided that, notwithstanding anything to the contrary in this definition of “Business Day”, at any time during which a Rate Management Agreement with the Registered Owner is then in effect with respect to all or a portion of this Note, then the definitions of “Business Day” and “Banking Day”, as applicable, pursuant to such Rate Management Agreement shall govern with respect to all applicable notices and determinations in connection with such portion of this Note subject to such Rate Management Agreement.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.



“Daily Compounded SOFR” means, for any day, SOFR, with interest accruing on a compounded daily basis, with the methodology and conventions for this rate (which may include compounding in arrears with a lookback or observation shift) being established by the Registered Owner in accordance with a methodology and the conventions for this rate recommended (x) by the Relevant Governmental Body for determining “Daily Compounded SOFR” for business loans or (y) by reference to the ISDA Definitions for derivatives comparable to any applicable Swap Agreement; provided, that if the Registered Owner decides that any such convention is not administratively feasible for the Registered Owner, then the Registered Owner may establish another convention in its reasonable discretion.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Registered Owner in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Registered Owner decides that any such convention is not administratively feasible for the Registered Owner, then the Registered Owner may establish another convention in its reasonable discretion.

“Default” or “Event of Default” means any event or condition that with the passage of time or giving of notice, or both, would constitute a Default or Event of Default under Section 6(a) hereof.

“Default Rate” has the meaning provided in Section 7 hereof.

“Early Opt-in Election” means the occurrence of:

(i) a determination by the Registered Owner that at least five currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) or an Alternative Benchmark Rate as a benchmark rate (and such credit facilities are identified in such notice and are publicly available for review),

(ii) the election by the Registered Owner to trigger a fallback from the then-current Benchmark and the provision by the Registered Owner of notice of such election to the Governmental Agency in a Benchmark Transition Notice,

(iii) the election by the Registered Owner to replace the then-current Benchmark, if such Benchmark is Daily Simple SOFR or Daily Compounded SOFR, with Term SOFR and the provision by the Registered Owner of notice of such election to the Governmental Agency in a Benchmark Transition Notice.

“ERISA” means the Employee Retirement Income Security Act of 1974, and any regulations promulgated thereunder from time to time, as amended or as may be replaced by successor statute.

“ERISA Affiliate” has the meaning provided in Section 8(i) hereof.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including without limitation ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean up or other remediation thereof.

“Excluded Swap Obligation” means, with respect to any guarantor of a Swap Obligation, including the grant of a security interest to secure the guaranty of such Swap Obligation, any Swap Obligation if, and to the extent that, such Swap Obligation is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty or grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Swap Obligation or security interest is or becomes illegal.

“Final Interest Payment Date” means the earliest of the Maturity Date or the date of prepayment or acceleration of this Note.

“Financial Statements” means Governmental Agency’s audited, consolidated and consolidating, unless otherwise permitted by the Registered Owner, balance sheet and income statement and, if requested by the Registered Owner, Governmental Agency’s audited, unless otherwise permitted by the Registered Owner, statement of cash flows and reconciliation of net worth.

“Floor” means the benchmark rate floor, if any, provided in this Note initially (as of the execution of this Note, the modification, amendment, or renewal of this Note or otherwise) with respect to USD LIBOR.

“IHS Markit Credit Rate” means, for the corresponding tenor, the benchmark rate designed to be a broad-based measure of average funding rates for banking institutions funding in U.S. Dollars, in institutional markets, on a senior unsecured basis as provided by IHS Markit as administrator of the benchmark (or a successor administrator).

“Initial Interest Payment Date” means the first Interest Payment Date immediately succeeding the date of the first advance of principal hereunder.

“Interest Payment Date” means the first Business Day of each Calendar Month.

“Interest Period” means, for the first payment of interest hereunder, the period beginning on (and including) the date of the initial advance of principal to the Governmental Agency hereunder to (but excluding) the Initial Interest Payment Date, for all other payments of interest hereunder other than the final interest payment, a period beginning on (and including) the immediately preceding Interest Payment Date to (but excluding) the Interest Payment Date for which a payment of interest is being determined, and for the final interest payment hereunder, a period beginning on (and including) the immediately preceding Interest Payment Date to (and including) the Final Interest Payment Date.

“Interest Rate” means the LIBOR Rate, unless a different rate is selected pursuant to the terms of Section 4(h) hereof.

“Interest Rate Determination Date” means, for the initial disbursement of the Loan, the date of such disbursement, and for all other purposes, the second (2<sup>nd</sup>) Business Day before the LIBOR Adjustment Date.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“LIBOR Adjustment Date” shall have the meaning given in Section 4(h) hereof.

“LIBOR Rate” shall mean, as of any date of determination in accordance with this Note, the rate of interest rounded upwards, if necessary, to the next 1/8th of 1% and adjusted for reserves if the Registered Owner is required to maintain reserves with respect to relevant advances) fixed by ICE Benchmark Administration Limited (or any successor thereto, or replacement thereof, approved by Registered Owner, each an “Alternate LIBOR Source”) at approximately 11:00 a.m., London, England time (or the relevant time established by ICE Benchmark Administration Limited, an Alternate LIBOR Source, or the Registered Owner, as applicable), two Business Days before such date of determination, relating to quotations for the one month London InterBank Offered Rates on U.S. Dollar deposits, displayed by Bloomberg LP (or any successor thereto, or replacement thereof, as approved by the Registered Owner, each an “Approved Bloomberg Successor”), or if no longer displayed by Bloomberg LP (or any Approved Bloomberg Successor), such rate as shall be determined in good faith by Registered Owner from such sources as it shall determine to be comparable to Bloomberg LP (or any Approved Bloomberg Successor), all as determined by Registered Owner in accordance with this Note and the Registered Owner’s loan systems and procedures periodically in effect. Notwithstanding anything to the contrary contained herein, in no event shall the LIBOR Rate be less than 0.50% as of any date (the “LIBOR Rate Minimum”); provided that, at any time during which a Rate Management Agreement with Registered Owner is then in effect with respect to all or a portion of the Obligations, the LIBOR Rate Minimum shall be disregarded and no longer of any force and effect with respect to such portion of the Obligations subject to such Rate Management Agreement. Each determination by

Registered Owner of the LIBOR Rate shall be binding and conclusive in the absence of manifest error.

“LIBOR Rate Loan” shall mean each portion of the outstanding principal balance of the Loan that is bearing interest at the Adjusted LIBOR Rate.

“Lien” means any security interest, mortgage, pledge, assignment, lien or other encumbrance of any kind, including interests of vendors or lessors under conditional sale contracts or capital leases.

“Loan” means any and all advances of funds under this Note.

“Loan Documents” means the Resolution, this Note, and the Governmental Agency’s closing certificates accompanying this Note. “Loan Document” means any one of the Loan Documents.

“Note” means this Note, evidencing the Loan, in the maximum amount of Five Million and No/100 Dollars (\$5,000,000.00) dated July 26, 2021.

“Obligations” means all loans, advances, indebtedness and each and every other obligation or liability of the Governmental Agency owed to each of Registered Owner or any affiliate of Fifth Third Bancorp, however created, of every kind and description whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, participated in whole or in part, created by trust agreement, lease overdraft, agreement or otherwise, whether or not secured by additional collateral, whether originated with the Registered Owner or owed to others and acquired by the Registered Owner by purchase, assignment or otherwise, and including without limitation all loans, advances, indebtedness and each and every obligation or liability arising under the loan document, any and all Rate Management Obligations, letters of credit now or hereafter issued by the Registered Owner or any affiliate of Fifth Third Bancorp for the benefit of or at the request of the Governmental Agency, all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys’ fees incurred by the Registered Owner hereunder or any other document, instrument or agreement related to any of the foregoing, including without limitation, this Note. The term “Obligation” or “Obligations” does not include an Excluded Swap Obligation.

“Organizational Documents” means the legislation and documents necessary for the formation of an entity, specifically, the Governmental Agency.

“Person” means an individual, association, unincorporated organization, corporation, limited liability company, partnership, joint venture, business trust or a government or an agency or a political subdivision thereof, or any other entity.

“Prime Rate” shall mean, for any day, the floating rate of interest established from time to time by the Registered Owner at its principal office as its “Prime Rate”, whether or

not the Registered Owner shall at times lend to the Governmental Agency at lower rates of interest or, if there is no such prime rate, then such other rate as may be substituted by the Registered Owner for the prime rate. Each determination by the Registered Owner of the Prime Rate shall be binding and conclusive in the absence of manifest error.

“Rate Management Agreement” means any agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation any ISDA Master Agreement between the Governmental Agency and the Registered Owner or any affiliate of Fifth Third Bancorp, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time.

“Rate Management Obligations” means any and all obligations of the Governmental Agency to the Registered Owner or any affiliate of Fifth Third Bancorp, whether absolute, contingent or otherwise and howsoever and whenever (whether now or hereafter) created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefore), under or in connection with (a) any and all Rate Management Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Rate Management Agreement.

“Registered Owner” means Fifth Third Bank, National Association, a federally chartered institution, and all affiliates, employees, directors, officers, agents and insurers thereof.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“Reportable Event” has the meaning provided in Section 8(i) hereof.

“Resolution” means the resolution of the Governmental Agency’s Board of Regents dated July 12, 2021.

“Rest Period” has the meaning provided in Section 9(a)(xii) hereof.

“SOFR” means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as administrator of the secured overnight financing rate from time to time).

“Swap Obligation” means any Rate Management Obligation that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act, as amended from time to time.

“Term SOFR” means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Trust Agreement” has the meaning provided in Section 14 hereof.

“UCC” or “Uniform Commercial Code” means that version of the Uniform Commercial Code adopted by the Commonwealth of Kentucky whose law has been chosen as governing law.

“USD LIBOR” means the London interbank offered rate for U.S. dollars.

Section 18 -- Severability. The declaration of invalidity of any provision of this Note shall not affect any part of the remainder of the provisions.

Section 19 -- Assignment. The Governmental Agency agrees not to assign any of the Governmental Agency’s rights, remedies, or obligations described in this Note without the prior written consent of the Registered Owner. The Governmental Agency agrees that the Registered Owner may assign some or all of its rights and remedies described in this Note without notice to, or prior consent from, the Governmental Agency.

Section 20 -- Modification; Waiver of the Registered Owner. The modification or waiver of any of the Governmental Agency’s obligations or the Registered Owner’s rights under this Note must be contained in a writing signed by the Registered Owner. The Registered Owner may perform the Governmental Agency’s obligations, or delay or fail to exercise any of its rights or remedies, without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver on another occasion. The Governmental Agency’s obligations under this Note shall not be affected if the Registered Owner amends, compromises, exchanges, fails to exercise, impairs, or releases (a) any of the obligations belonging to any co-Governmental Agency, endorser, or guarantor or (b) any of its rights against any co-Governmental Agency, guarantor, or endorser.

Section 21 -- Waiver of the Governmental Agency. Demand, presentment, protest and notice of dishonor, notice of protest and notice of default are hereby waived by the Governmental Agency, and any endorser or guarantor hereof. The Governmental Agency, including without limitation all co-makers and accommodation makers of this Note, hereby waives all suretyship defenses including without limitation all defenses based upon impairment of collateral and all suretyship defenses described in Section 3-605 of the UCC. Such waiver is entered to the full extent permitted by Section 3-605 (i) of the UCC.

Section 22 -- Governing Law; Consent to Jurisdiction. This Note is delivered in, is intended to be performed in, will be governed, construed, and enforceable in accordance with and governed by the internal laws of, the Commonwealth of Kentucky, without regard to principles of conflicts of law. The Governmental Agency agree that the state and federal courts in the county where the

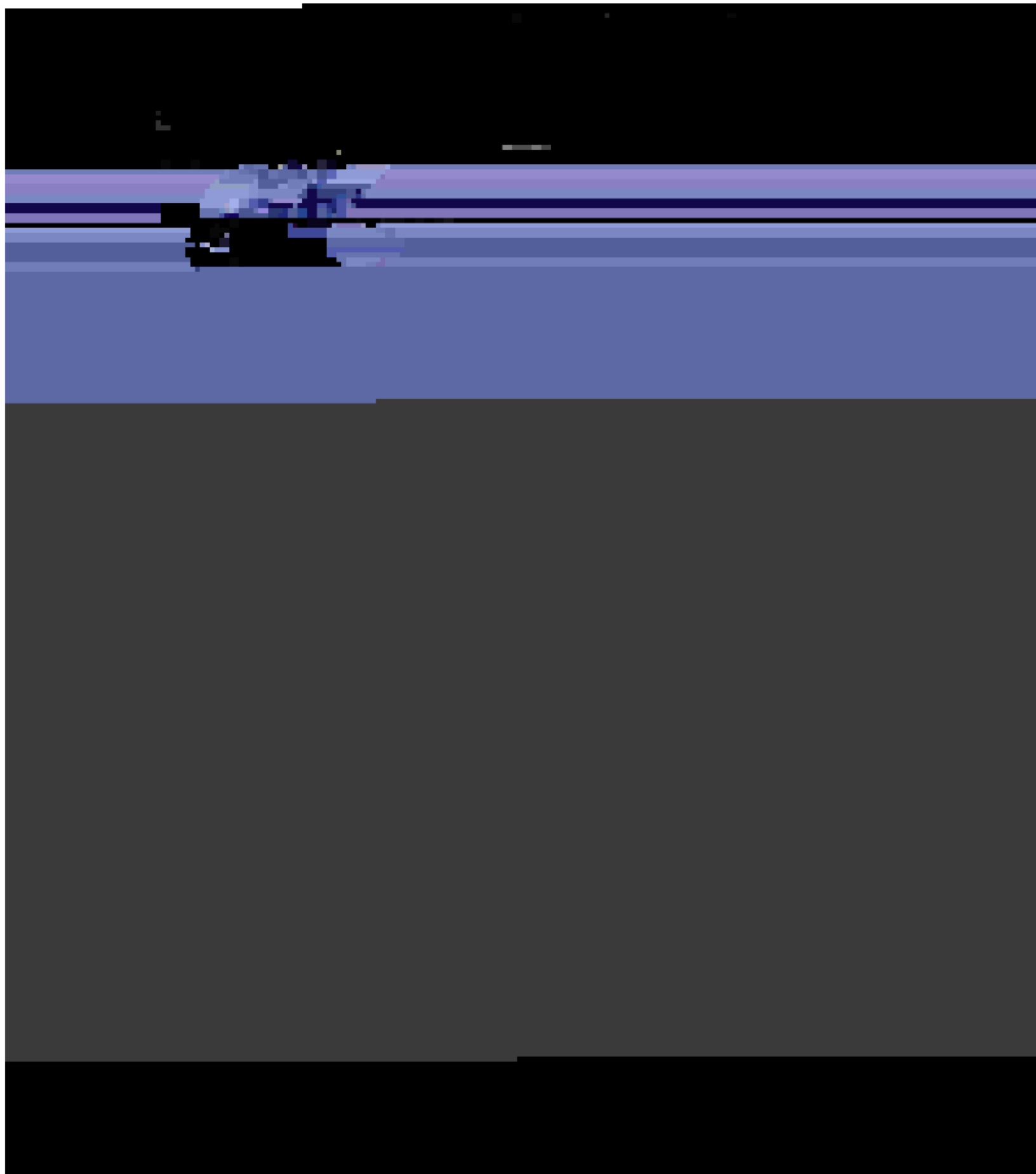
Registered Owner has its principal place of business (Lexington, Kentucky) shall have exclusive jurisdiction over all matters arising out of this Note, and that service of process in any such proceeding shall be effective if mailed to the Governmental Agency at the address set forth herein.

Section 23 -- Jury Waiver. THE GOVERNMENTAL AGENCY, AND ANY ENDORSER OR GUARANTOR HEREOF, WAIVE THE RIGHT TO A TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Signature page to follow]











## KENTUCKY STATE UNIVERSITY BOARD OF REGENTS

### ACTION ITEM 8D

#### **ACTION ITEM:**

Approval of amendment to administrative regulation 745 KAR 1:035

#### **FACTS:**

KSU seeks to amend 745 KAR 1:035 to clarify Kentucky State University Board of Regents' authority to perform fiscal management functions including, but not limited to, the Board's ability to authorize the University President to perform the fiscal management functions as stated in KRS 164A. 575, subsections 1-9, and 11-18; and the ability of the Board to authorize the University President to negotiate with vendors as authorized by KRS 164A. 575.

#### **BUDGETARY IMPLICATIONS:**

None

#### **RECOMMENDATION:**

Acting President Stamps recommends that the Board of Regents approve the amendment to administrative regulation 745 KAR 1:035

#### **MOTION:**

Approve amendment to administrative regulation 745 KAR 1:035.

1 KENTUCKY STATE UNIVERSITY

2 (Amendment)

3 745 KAR 1:035. Procurement procedures.

4 RELATES TO: KRS 164A.575

5 STATUTORY AUTHORITY: KRS 164A.560

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 vests the responsibility with  
7 the governing board of a public institution of public higher education to elect to perform financial  
8 management functions in accordance with KRS 164A.555 to 164A.630 by issuing administrative  
9 regulations. It also permits the board to delegate these responsibilities to an institution official. The  
10 function of this administrative regulation shall be to implement the provisions of KRS  
11 164A.560(1) and 164A.575 at Kentucky State University.

12 Section 1. The Board of Regents of Kentucky State University, under the authorization of KRS  
13 164A.560, elects to perform the financial management functions specified in KRS 164A.575,  
14 Sections (1), (2), (3), (4), (5), (6), (7), (8), (9) [~~(10)~~], (11), [~~and~~] (12), (13), (14), (15), (16), (17)  
15 and (18).

16 Section 2. The president of the university shall be authorized by the Board of Regents of Kentucky  
17 State University to perform the financial management functions specified in KRS 164A.575,  
18 Sections (1), (2), (3), (4), (5), (6), (7), (8), (9) [~~(10)~~], (11), [~~and~~] (12), (13), (14), (15), (16), (17)  
19 and (18).

- 1 Section 3. The president of the university shall be authorized by the Board of Regents of
- 2 Kentucky State University to negotiate with vendors as authorized by KRS 164A.575.

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CLARA ROSS STAMPS, Acting President  
Kentucky State University

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ELAINE FARRIS, Chair  
Kentucky State University Board of Regents

APPROVED BY AGENCY: Kentucky State University

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on **Month ##, 2021**, at **time**, at **location of the meeting**. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until **Month ##, 2021**. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Gregory M. Rush, Vice President for Finance and Administration  
Finance and Administration, Julian M. Carroll Academic Services Building, Suite 201, 104  
University Drive, Frankfort, KY 40601, (502) 597-6343, and Gregory.Rush@kysu.edu

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation number: 745 KAR 1:035

Contact Person: Gregory Rush

Phone:

Email: Greg.Rush@kysu.edu

(1) Provide a brief summary of: 745 KAR 1:035

(a) What this administrative regulation does: Establishes procurement procedures for a public institution of higher education.

(b) The necessity of this administrative regulation: The function of this administrative regulation shall be to implement the provisions of KRS 164A.560(1) and 164A.575 at Kentucky State University.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164A.560 Election by institution to perform in accordance with KRS 164A.555 to 164A.630 states, “(1)The governing boards of the postsecondary educational institutions electing to perform in accordance with KRS 164A.555 to 164A.630 regarding the acquisition of funds, accounting, purchasing, capital construction, and affiliated corporations shall do so by regulation. The responsibility for this election is vested with the governing boards, any other statute to the contrary notwithstanding. The governing board may delegate these responsibilities by regulation to appropriate officials of the institution.” This administrative regulation reflects the authorizing statute by permitting the Kentucky State University Board of Regents to delegate the responsibilities to an institution official, the President.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation indicates the elected financial management functions by the BOR of Kentucky State University: KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (9), (11), (12) ,(13), (14), (15), (16), (17) and (18).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments include deletion of section (10) and addition of sections (9), (13), (14), (15), (16), (17), and (18), to align with the revisions to the statute.

(b) The necessity of the amendment to this administrative regulation: Aligns the administrative regulation with the revisions to KRS 164A.575.

(c) How the amendment conforms to the content of the authorizing statutes: Amendments to KRS 164A.575 resulted in the need to amend this administrative regulation for consistency with the applicable financial management functions of Kentucky State University.

(d) How the amendment will assist in the effective administration of the statutes: The amendment brings the administrative regulation into alignment with the applicable statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky State University, Board of Regents of Kentucky State University, the President of Kentucky State University.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to



take to comply with this administrative regulation or amendment: The amendment aligns the administrative regulation with the applicable statute; no actions needed by the entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost for entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alignment of this administrative regulation with the applicable statute.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in funding or fees necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No establishment or increase of fees.

(9) TIERING: Is tiering applied? Tiering was not used as tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 745 KAR 1:035

Contact Person:

Phone number:

Email:

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky State University

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164A.560, KRS 164A.555 to 164A.630, KRS 164A.575.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue generation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue generation.

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No expenditures or revenues associated with 745 KAR 1:035. Procurement Procedures.