



EXECUTIVE

August 9, 2024

**NAMING REQUEST FOR
MAHURIN HONORS COLLEGE OFFICE SUITES**

REQUEST:

Approval of the naming of the Mahurin Honors College office suites to recognize Dr. Craig Cobane.

FACTS:

Dr. Craig Cobane was hired at Western Kentucky University in 2005 as the founding Executive Director of the Mahurin Honors College, a position in which he served with distinction until his death. He also held the academic title of the John and Jacque Jarve Professor in Honors.

Among Dr. Cobane's milestone achievements at WKU were the creation of Kentucky's first Honors College, the proliferation of the Honors capstone and thesis programs, and the establishment of the Office of Scholar Development, which has produced numerous student recipients of national and international prestigious scholarships including Fullbright, Gilman, and Goldwater scholarships. He directed significant growth in WKU's study abroad opportunities and established the Chinese Flagship program through the U.S. Department of Defense.

Dr. Cobane was a prolific recruiter of high academic achieving students for the Mahurin Honors College and served as a mentor to thousands of students as they pursued their academic and professional dreams. He was instrumental in establishing a strong Mahurin Honors College alumni network and charted the College's course in philanthropy. His leadership, passion for learning, and commitment to his students will forever be cherished in the WKU community.

This naming request is recommended in recognition of the contributions of Dr. Craig Cobane.

BUDGETARY IMPLICATIONS:

The President's office will cover the cost of the sign for the area.

RECOMMENDATION:

President Timothy C. Caboni recommends the naming of the Mahurin Honors College office suites in honor of Dr. Craig Cobane.

MOTION:

Approval of the naming of the Mahurin Honors College office suites to the Dr. Craig Cobane Honors College Office Suites.

ENDOWMENT FUND MINIMUM INCREASE TO \$25,000

REQUEST:

Approval to increase the minimum endowment fund amount to \$25,000 effective January 1, 2025.

FACTS:

The current minimum endowment fund amount is \$10,000. This proposed increase is the first time one has been requested at WKU.

As WKU strives to be a Research 2 (R2) institution and provide access to a quality education, the endowment level must increase to keep pace with inflation and the cost of attendance.

Compared to other public institutions in the Commonwealth of Kentucky, WKU is the only institution remaining at the \$10,000 level. The proposed minimum of \$25,000 is also comparable to 18 benchmark institutions.

Increase Investment

Raising the endowment minimum to \$25,000 allows for larger annual distributions to academic programs, scholarships and strategic initiatives. This would more than double the minimum current annual payout from \$400 to \$1,000.

Reduce Administrative Burden

Dealing with a higher volume of smaller endowments can be administratively intensive. Raising the minimum reduces overhead and allows for more efficient fund management.

Strengthen Donor Engagement

A higher threshold encourages donors to become more engaged with WKU, fostering a deeper connection and commitment to its success.

Alignment with Peer Institutions

Adjusting the minimum endowment aligns the University with benchmark institutions, creating a standard for donor expectations and reinforcing its position in the higher education landscape.

Financial Flexibility

A higher endowment threshold provides increased financial flexibility through leadership annual gifts, allowing for timely responses to unforeseen challenges and the pursuit of innovative opportunities.

Long-Term Stability

An increase supports the long-term stability of the University, ensuring that it can weather economic uncertainties and continue to provide a high-quality education for generations to come.

BUDGETARY IMPLICATIONS:

There are no budget implications.

RECOMMENDATION:

President Timothy C. Caboni recommends increasing the minimum endowment fund amount to \$25,000 effective January 1, 2025.

MOTION:

Approval to increase the minimum endowment fund amount to \$25,000 effective January 1, 2025.

**ENDOWMENT MATCH PROGRAM APPROVAL FOR
COMPREHENSIVE UNIVERSITY EXCELLENCE TRUST FUND**

REQUEST:

Approval of gifts and pledges by private donors that are eligible for the state match as part of the Council on Postsecondary Education Endowment Match Program through the Comprehensive University Excellence Trust Fund.

FACTS:

Gail and Gary Broady of Franklin, Ky., pledged \$125,000 for the Gail and Gary Broady Scholarship Fund and \$125,000 for the Gail and Gary Broady Living and Learning Community Scholarship Fund on December 18, 2023. The funds provide scholarship support for full-time students in the Gordon Ford College of Business who are pursuing a degree within a STEM+H discipline and students who are participating in the Gordon Ford College of Business Living and Learning Community. The donor committed to fulfilling the pledge over a five-year period beginning in December 2023.

Franklin Bank and Trust Co. of Franklin, Ky., pledged \$125,000 for the Gail and Gary Broady Scholarship Fund and \$125,000 for the Gail and Gary Broady Living and Learning Community Scholarship Fund on December 18, 2023. The funds provide scholarship support for full-time students in the Gordon Ford College of Business who are pursuing a degree within a STEM+H discipline and students who are participating in the Gordon Ford College of Business Living and Learning Community. The donor committed to fulfilling the pledge over a five-year period beginning in December 2023.

Linda Gamblin Ball of Lexington, Ky., made a gift of \$250,000 to establish the Yvonne Sharber Gamblin Nursing Scholarship Fund on December 13, 2023. The fund, created in honor of her mother, provides scholarship support for full-time nursing students from the Western Kentucky region of the state.

Don and Jennifer Greulich of The Villages, Fla., pledged \$250,000 to enhance the Greulich Chair in Robotics and Automation Engineering, originally established in 2007. The pledge was made on July 18, 2024, with a commitment to fulfill the pledge over a five-year period beginning in December 2024.

In total, WKU will request \$1 million from the Council on Postsecondary Education Endowment Match Program through the Comprehensive University Excellence Trust Fund.

BUDGETARY IMPLICATIONS:

There are no budgetary implications.

RECOMMENDATION:

President Timothy C. Caboni recommends the approval of the endowment match program for the comprehensive university excellence trust fund.

MOTION:

Approval of the endowment match program for the comprehensive university excellence trust fund.

HONORIFIC NAMING REQUEST FOR GARRETT PLAZA

REQUEST:

Approval of the honorary naming of Garrett Plaza located at the former site of the Garrett Conference Center in recognition of Dr. Paul Garrett and Mrs. Virginia Garrett.

FACTS:

Dr. Paul L. Garrett served as the second President of Western Kentucky State Teachers College (now Western Kentucky University) from 1937 to 1955. A native of Waddy, Ky., Dr. Garrett earned undergraduate and graduate degrees from Georgetown College. He also completed graduate work at the University of Chicago and the University of Kentucky.

Dr. Garrett's tenure covered a particularly challenging time for the University, from the Great Depression through World War II and into the post-war period. Dr. Garrett was successful in securing federal support for important campus needs. He also addressed the challenges presented by the enrollment surge after the end of the war. To accommodate the number of veterans arriving on campus during this time, he arranged for temporary campus housing—a conglomeration of small houses and trailers—that came to be known as Vet Village. In addition to resolving housing shortages, Dr. Garrett also saw the need for a student center that would provide recreation and programming opportunities for students. His efforts led to the construction of the University's first student center, which opened near this site in 1953. The facility was named in his honor after his death in 1955 and remained operational until 2021.

Mrs. Virginia E. Garrett left her own unique mark on the campus. An avid gardener and a student of horticulture, she was active in campus beautification projects, a service she continued even after her husband's death when she was hired to oversee an extensive landscaping project. Under her supervision, the campus planted more than 1,000 shrubs in the spring of 1955 and more than 100 trees during the next few years. Mrs. Garrett continued in this role for the University until her death in 1961.

Garrett Plaza is named in recognition of Dr. and Mrs. Garrett's remarkable service and legacy at WKU.

BUDGETARY IMPLICATIONS:

Signage will be covered through the Philanthropy & Alumni Engagement budget.

RECOMMENDATION:

President Timothy C. Caboni recommends the honorary naming of Garrett Plaza in recognition of Dr. Paul Garrett and Mrs. Virginia Garrett.

MOTION:

Approval of the honorary naming of Garrett Plaza in recognition of Dr. Paul Garrett and Mrs. Virginia Garrett.

**MEMORANDUM OF UNDERSTANDING BETWEEN
HILLTOPPER ATHLETIC FOUNDATION AND
WESTERN KENTUCKY UNIVERSITY**

REQUEST:

Approval of a Memorandum of Understanding (MOU) between the Hilltopper Athletic Foundation (HAF) and Western Kentucky University (WKU).

FACTS:

The HAF, governed by a Board of Directors, was established in 1965 to provide scholarships and other financial assistance to allow student athletes an opportunity for an academic and athletic experience at WKU and to further support WKU Athletics through private support and visibility.

The HAF and WKU desire to execute a MOU to define the relationship between the entities as required by WKU's accrediting body, document mutual expectations, and provide a framework for both HAF and WKU to work together to benefit WKU athletics and the WKU community, including students, faculty, alumni, donors, and support organizations.

RECOMMENDATION:

President Timothy C. Caboni requests approval of the Memorandum of Understanding (MOU) between Hilltopper Athletic Foundation and Western Kentucky University. A copy of the MOU is included with the agenda material.

MOTION:

To approve the Memorandum of Understanding (MOU) between Hilltopper Athletic Foundation and Western Kentucky University.

Memorandum of Understanding
between
Hilltopper Athletic Foundation and Western Kentucky University

This Memorandum of Understanding (“MOU”) is made and entered into effective as of _____ by and between The Hilltopper Athletic Foundation, Inc., a Kentucky nonprofit corporation (the “Foundation”), and Western Kentucky University (the “Institution”).

In consideration of the independent and mutual commitments herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Foundation and Institution agree as follows:

I. PURPOSES

The purposes of this MOU include the following:

a. To provide a framework and shared point of reference for leaders of both the Institution and the Foundation to work together for the benefit of Western Kentucky University athletics and the larger Western Kentucky University community, including students, student-athletes, faculty, alumni, donors, and support organizations.

b. To clarify and document mutual expectations, enumerate the primary ways in which the Foundation and Institution work together to support their shared mission, and to clearly delineate and allocate responsibilities between the Foundation and the Institution.

c. To affirm the independent corporate status of the Foundation, articulate the ways in which it fulfills its charitable purpose of support of the Institution, and to confirm the status of the Foundation as an independent advocate of the Institution in its interactions with the Institution’s athletics community, donors, and the public.

d. To provide a vital source of continuity through leadership transitions and serve as a valuable tool to educate new administrators and board members, as well as external constituents, about the role of the Foundation and its relationship with the Institution.

II. FOUNDATION/INSTITUTION RELATIONSHIP

a. The Foundation/Institution relationship is derived from a shared interest in the success and further development of the athletics programs at Institution. It is recognized that to be effective in achieving its purpose, the Foundation shall operate independently from the Institution. However, the accountability of both the Foundation and the Institution are concerns common to both parties. The Institution controls fundraising activities conducted in furtherance of the Institution, including but not limited to fundraising activities in furtherance of athletics. The Foundation assists the Institution in athletics fundraising activities and supports the overall student-athlete experience at the Institution.

b. While the Institution benefits from the Foundation’s success, the Foundation is fully capable of supporting itself. The parties agree that one purpose of this MOU is to establish that the Foundation is not subsidized by the Institution. It is the shared intent of the Institution and

Foundation that the business arrangement between them be “arm’s length.” The Foundation compensates the Institution for the cost of the services and other benefits which the Foundation obtains from the Institution by providing both (1) valuable services to the Institution for which the Foundation is not otherwise compensated and (2) a mutually agreed upon annual contribution from the Foundation to the Institution. The annual contribution made by the Foundation to the Institution is to be mutually agreed upon by both parties in the prior fiscal year. It is the intent of the parties that, in any given fiscal year, the monetary value of the services provided by the Foundation to the Institution, in conjunction with the annual contribution, shall always meet or exceed the monetary value of any support the Institution provides to the Foundation.

c. Institution

(i) The Board of Regents of the Institution is responsible for overseeing the mission, leadership, strategic priorities, and operations of the Institution and its Athletic Department.

(ii) The Board of Regents of the Institution is responsible for the employment, compensation, and evaluation of the President of the Institution. The Foundation shall not provide compensation to the President or any other employee of the Institution without the necessary prior approvals in accordance with the policies of the Institution.

d. Foundation

(i) The Foundation was established in 1965 for the purpose of, among other things, providing the necessary scholarships and other financial assistance to allow as many student athletes as possible the opportunity for an athletic and academic experience at the Institution and to further support the Institution’s athletics through private support and visibility.

(ii) As more particularly stated in its Articles of Incorporation, the Foundation is a Kentucky nonprofit corporation organized and operated exclusively for charitable purposes as may qualify it for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation is able to take and hold (whether by gift, bequest, devise, or purchase), either absolutely or in trust, any property, real or personal, and to sell, exchange, transfer, or convey such property and to invest and reinvest the same, and to apply the income and principal of such property or any accretion thereto, for the benefit of the Institution and in furtherance of its purposes.

(iii) While the Institution is an agency and instrument of the Commonwealth of Kentucky, the Foundation is not. Further, the Foundation is not an operational function, division, or agent of the Institution. The Foundation exists as an independent legal entity which is completely separate from the Institution. The Foundation was not established or created by the Institution and the Foundation is not controlled by the Institution. As such, the Foundation is able to partner with the College Heights Foundation in a pooled investment of assets and otherwise conduct its business as an independent nonprofit corporation.

(iv) The Foundation is governed by a board of directors that is independent from the Institution (the “Board”), each member of which has been duly elected pursuant to the provisions set forth in the Foundation’s articles of incorporation and bylaws.

[a] The Board has the sole authority to set policy for the Foundation, retain investment advisers or professional counsel, otherwise direct the business and operations of the Foundation, and in conjunction with the Institution, hire/fire the Foundation’s Executive Director.

[b] The Board is responsible for ensuring the effective control and management of all assets of the Foundation, including the prudent management of all gifts, consistent with donor intent.

[c] The Board is responsible for the performance and oversight of all aspects of the Foundation’s operations and shall maintain a comprehensive set of bylaws that clearly addresses the Board’s fiduciary duties, including requirements that individual members of the Board act in good faith, on an informed basis, and in a manner consistent with the Foundation’s fiduciary duties and the Foundation’s best interests.

[d] The Board shall establish and enforce policies to identify and manage potential conflicts of interest and ensure that Foundation assets do not directly or indirectly unduly benefit an individual person or entity.

III. INSTITUTION RESPONSIBILITIES

In consideration of the elements outlined in Article II – Foundation/Institution Relationship, Article IV – Foundation Responsibilities, and of all of the monetary support and services otherwise provided to the Institution by the Foundation, the Institution hereby agrees to provide the following support for the Foundation:

a. Appropriate facilities, office space, and utilities on WKU’s campus for the Foundation’s operations.

b. Information technology support to include, but not be limited to, email accounts, document imaging, server capacity, backup storage, website platform, cybersecurity, and enterprise systems, provided that the Foundation agrees it will comply with the Institution’s policies and procedures related to access and use of the Institution’s information technology support/services.

c. Access to the Institution’s telephone system.

d. Access to Institution postal services.

e. Access, or opportunity to access, other benefits or services available to employees of the Institution, such as membership in the health and activities center, campus parking passes, group travel discounts, WKU store discounts, meal plan options, and athletic ticket discounts.

f. The Institution hereby grants the Foundation a royalty-free, non-exclusive, non-transferable license to use the name “Western Kentucky University” and its shortened version “WKU”, as well as any marks or logos associated therewith (the “Marks”), in connection with the ordinary course of operations of the Foundation; however, the Foundation shall operate under its own seal and logotype. The Foundation agrees that the Marks are the sole property of the Institution and that the Foundation shall not acquire any rights or interest in the Marks.

g. At the request of the Foundation, the Institution shall continue to provide the services of certain of the Institution’s employees to the Foundation on a lease basis (the “Leased Employees”). Such Leased Employees shall work for the exclusive benefit of the Foundation but shall be employed by, paid by, and receive fringe benefits through, the Institution (and the Institution agrees to process such payments in the ordinary course consistent with the Institution’s policies). The direct costs associated with the Leased Employees along with the associated central costs of services provided by the Office of Human Resources shall be reimbursed by the Foundation to the Institution. The Foundation shall be responsible for the management and oversight of the Leased Employees, in consultation with the Athletic Director of the Institution. The Foundation shall notify the Institution immediately in the event the Foundation is not pleased with the performance of any Leased Employee and/or desires to discontinue the services of any Leased Employee, and the Institution shall use its best efforts to promptly implement any such requested change. The Foundation may also request that the salary of Leased Employees be adjusted, and the Institution will make a good-faith consideration of the request, considering, among other things, the timing and size of the requested salary adjustment. The Foundation agrees that compensation it requests for a Leased Employee shall always be reasonable and calculated to be commensurate to what similarly situated university foundations pay for similarly situated employees. The Foundation shall indemnify and hold the Institution harmless from and against any claim, cause of action or demand asserted by any Leased Employee that is related to, or arises out of, the services performed by any Leased Employee for the Foundation, the compensation, benefits, or terms of employment of any Leased Employee at levels requested by the Foundation, any adverse employment action requested by the Foundation, or the actions, or inactions, of other Leased Employees or Foundation employees.

h. Such other support as may be mutually agreed between the Foundation and the Institution from time to time.

i. In addition to the foregoing, the Institution agrees as follows:

(i) The President of the Institution is responsible for communicating to the Foundation the philanthropic priorities and long-term plans of the Institution, as approved by the Board of Regents.

(ii) The Athletic Director of the Institution shall serve as an ex-officio non-voting member of the Foundation Board. The Athletic Director shall regularly consult with the Foundation’s Board on the long-term strategic vision of the athletic department, how to implement it, and potential financial or other needs of the athletic department.

(iii) The Institution shall ensure that gift funds and other resources designated for the Foundation are utilized by the Institution in compliance with donor intent.

(iv) The President of the Institution shall maintain control over fundraising activities conducted in furtherance of the Institution, and, together with other senior administrators, will maintain responsibility for identifying, cultivating, and soliciting prospects for private gifts. The President may, from time to time, specifically seek the assistance of the Foundation and its employees to fulfill those responsibilities.

IV. FOUNDATION RESPONSIBILITIES

In support of its charitable purpose and in consideration of the support provided to the Foundation by the Institution, the Foundation agrees to provide the following support to the Institution:

a. The Foundation shall maintain its status as a tax-exempt (501(c)(3)) Kentucky nonprofit corporation.

b. The Foundation shall distribute and steward gifts and resources in accordance with donor intent.

c. The Foundation shall be responsible for the management and oversight (as well as reimbursement for all compensation) of the Leased Employees as set forth in Section III.g above, in consultation with the athletic director of the Institution.

d. The Foundation shall regularly consult with the athletic director of the Institution regarding the overall mission and day-to-day activities of the Foundation. However, the Foundation shall at all times maintain independence from the Institution, as described in Section II of this MOU.

e. The Foundation may, from time to time, subsidize athletics expenditures at the request of the Institution.

f. At the end of each fiscal year, the Foundation shall assess its overall financial status, including but not limited to the amount of any cash-on-hand and its anticipated operating costs for the upcoming year. The Foundation shall retain a reasonable reserve to fund its future operations and shall make a mutually agreed upon contribution each fiscal year to the Institution. This contribution shall be agreed upon by both the Foundation and Institution in the prior fiscal year.

g. The Foundation shall create an environment conducive to increasing levels of private support for the athletic mission and priorities of the Institution, provided the Institution shall maintain the primary responsibility of soliciting and generating donor gifts.

h. The Foundation shall establish, adhere to, and periodically assess its gift acceptance policies, which shall include the obligation that Foundation must first give the Institution notice of any new proposed gift agreement, including all terms and conditions attached thereto, and receive approval from the Institution, through its President or his/her designee, before the Foundation may accept any gift or pledge that obligates the Institution. The Foundation, in conjunction with the services provided by the College Heights Foundation, will promptly acknowledge and issue receipts for all gifts and provide appropriate recognition and stewardship of such gifts.

i. The Foundation, while protecting personal and private information related to donors who condition their contributions upon confidentiality (pursuant to policies to be established and enforced by the Foundation), shall in the spirit of transparency and accountability necessary to build trust with donors and the general public, use reasonable efforts to respond to public inquiries related to revenue, expenditure policies, investment performance, and/or other information regarding the Foundation's operations which the larger Western Kentucky University community has an interest in understanding.

j. The Foundation has previously entered into a Memorandum of Understanding with the College Heights Foundation ("CHF"), pursuant to which CHF provides certain accounting and financial support services to the Foundation. The Foundation shall continue to abide by the MOU between itself and CHF in all respects and shall give notice to the Institution prior to the amendment or termination of that MOU.

k. The Foundation shall establish internal controls and other enterprise risk management practices commensurate with the fiduciary responsibilities of the Foundation and its Board.

l. The Foundation's Board of Directors shall evaluate the potential risks arising from the Foundation's operations and shall ensure that commercially reasonable amounts of general liability and directors/officers' insurance are obtained on behalf of the Foundation.

m. The Foundation shall establish necessary accounts and/or transfer funds to the designated entity within the Institution in compliance with applicable laws, Institution and Foundation policies, and donor gift agreements.

n. The Foundation's disbursements on behalf of the Institution must be reasonable business expenses that support the Institution, are consistent with donor intent, and do not conflict with applicable law.

o. The Foundation shall not, without the prior written consent of the Institution, negotiate or enter into contracts on behalf of the Institution or that otherwise commit or bind the Institution.

p. The Foundation shall, for a reasonable time, maintain copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

q. The Foundation shall provide access to data and records to the Institution upon reasonable request and in accordance with Foundation policies and guidelines.

r. Upon request from the Institution, the Foundation shall assist with committee participation, fundraising initiatives, and/or plan implementation and in support of the overall mission of the Institution.

V. MISCELLANEOUS TERMS

a. This MOU has been approved by the Board of Regents of the Institution and by the Board of Directors of the Foundation.

b. To ensure effective achievement of the items of the MOU, the Institution and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

c. The Institution and Foundation may periodically review and amend this MOU as they jointly determine and agree to be necessary. Provided, however, that no amendment shall be binding or effective unless in writing and signed by duly authorized representatives of each of the Foundation and the Institution.

d. Either party may, upon 90 days prior written notice to the President and Board Chair of the other party, terminate this MOU. The party initiating termination of the MOU must act in good faith to provide an opportunity for a meeting to include Institution and Foundation executives and Board Chairs (or the Board Chairs' designees) within 30 days of initial written notice of intention to terminate the MOU.

e. If the Institution terminates this MOU, the Foundation may require the Institution to pay, within 90 days of written notice, all debts incurred by the Foundation on the Institution's behalf. If the Foundation terminates this MOU, the Institution may require the Foundation to pay all debt it holds on behalf of the Institution in like manner.

f. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS MOU, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

g. Notwithstanding the foregoing, both parties recognize that, whether this MOU has been terminated or remains in full force and effect, the Foundation has a fiduciary duty to fulfill its responsibilities to donors under the terms of the gifts it has received. That obligation continues after the termination of this MOU.

h. This MOU supersedes and replaces any prior memorandum of understanding or other agreement between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF, this MOU has been duly executed by the Foundation and the Institution as of the date first written above.

WESTERN KENTUCKY UNIVERSITY

By: _____

Its: _____

HILLTOPPER ATHLETIC FOUNDATION, INC.

By: _____

Its: _____

**MEMORANDUM OF UNDERSTANDING BETWEEN
WESTERN KENTUCKY UNIVERSITY ALUMNI
ASSOCIATION, INC. AND WESTERN
KENTUCKY UNIVERSITY**

REQUEST:

Approval of a Memorandum of Understanding (MOU) between the Western Kentucky University Alumni Association (“Alumni Association”) and Western Kentucky University (“WKU”).

FACTS:

Organized as a Kentucky nonprofit corporation in 1992, the Alumni Association, governed by a Board of Directors, serves to connect and engage Alumni through community, inclusion, and promotion of alumni achievement with the goal of inspiring alumni to invest in the future of WKU.

The Alumni Association and WKU desire to execute a MOU to formally define the relationship between the entities as required by WKU’s accrediting body, document mutual expectations, and provide a framework for both the Alumni Association and WKU to work together to benefit the WKU community, including students, faculty, alumni, donors, and support organizations.

RECOMMENDATION:

President Timothy C. Caboni requests approval of the Memorandum of Understanding (MOU) between Western Kentucky University Alumni Association and Western Kentucky University. A copy of the MOU is included with the agenda material.

MOTION:

To approve the Memorandum of Understanding (MOU) between Western Kentucky University Alumni Association and Western Kentucky University.

**Memorandum of Understanding
Between
Western Kentucky University Alumni Association, Inc.
and Western Kentucky University**

This Memorandum of Understanding (“MOU”) is made and entered into effective as of _____ by and between Western Kentucky University Alumni Association, Inc. (the “Alumni Association”), and Western Kentucky University (the “Institution”). This MOU supersedes and replaces in their entirety any prior memorandum of understanding, agreement, or contract between the parties on the subjects addressed herein.

In consideration of the independent and mutual commitments herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Alumni Association and Institution agree as follows:

I. Purposes

The purposes of this MOU include the following:

a. To provide a framework and shared point of reference for leaders of both the Alumni Association and the Institution to work together for the benefit of the larger Western Kentucky University community, particularly through alumni engagement designed to foster long-lasting and meaningful relationships between the Institution and its alumni base.

b. To clarify and document mutual expectations, enumerate the primary ways in which the Alumni Association and Institution work together to support their shared mission, and to clearly delineate and allocate responsibilities between the Alumni Association and the Institution.

c. To affirm the independent status of the Alumni Association, articulate the ways in which it fulfills its charitable and educational purpose in support of the Institution, and to confirm the status of the Alumni Association as an independent advocate of the Institution in its interactions with alumni and the public.

d. To provide a vital source of continuity through leadership transitions and serve as an important tool to educate new administrators and board members, as well as external constituents, about the role of the Alumni Association and its relationship with the Institution.

II. Alumni/Institution Relationship

a. The Alumni Association/Institution relationship is derived from a shared interest in the success and further development of the Institution. To that end, the Alumni Association works in conjunction with the Institution’s President and Office of Philanthropy and Alumni Engagement to engage alumni and community partners in support of the Institution, to inspire alumni to invest in the future of the Institution, and to recognize alumni success and achievements.

b. As a public charity under Section 509(a)(2) of the Internal Revenue Code, the Alumni Association serves to support the mission of the Institution in its exempt functions. To the extent that the Alumni Association engages in any fundraising activity or otherwise accepts

gifts from fundraising activity, that fundraising activity is ultimately controlled and dictated by the Institution.

c. The Institution is created by Kentucky statute and is governed by a Board of Regents that is responsible for overseeing the mission, leadership, strategic priorities, and operations of the Institution. Except for those responsibilities specifically reserved to the Board of Regents, the Institution's President has all other authority to conduct the day-to-day business of the Institution. The Alumni Association has no oversight authority over the Institution, or its Board of Regents, President, Administrators, Faculty and Staff.

d. The Alumni Association was organized on September 11, 1992 as a Kentucky nonprofit corporation for the purpose of, among other things, creating and cultivating a diverse, equitable, and inclusive environment that fosters opportunities for the Institution's alumni to sustain and grow their connections to WKU. Pursuant to Amended and Restated Bylaws adopted September 24, 2022, the Alumni Association is governed by its own Board of Directors, who are separate and apart from the Institution's Board of Regents, owing their fiduciary responsibilities solely and exclusively to the Alumni Association. The Alumni Association's Board of Directors shall, in turn, oversee the affairs, duties, and responsibilities of the Alumni Association's Executive Director, and shall make recommendations to the Institution regarding the terms of the Executive Director's employment with the Institution, which shall be followed by the Institution unless contrary to the Institution's policy or strategic plan, or applicable law.

III. Institution Responsibilities.

In consideration of the elements outlined in Articles II and the services the Alumni Association provides to the Institution, together with the Services Fee paid by the Alumni Association to the Institution, the Institution hereby agrees to provide the following support for the Alumni Association.

a. The Institution shall communicate to the Alumni Association its strategic and long-term plans, philanthropic priorities, and alumni engagement initiatives.

b. The Institution, through its President, shall maintain control over fundraising activities, to include maintaining responsibility for identifying, cultivating, and soliciting prospects for gifts. The President may, from time to time, seek the assistance of the Alumni Association to engage in fundraising activities.

c. The Institution shall provide the Alumni Association the following back-office services, subject to a mutually-agreed upon service fee charged by the Institution to the Alumni Association on an annual basis:

1. Information technology support to include, but not be limited to, email accounts, document imaging, server capacity, backup storage, website platform, cybersecurity, and enterprise systems, provided that the Alumni Association agrees it will comply with the Institution's policies and procedures related to access and use of the Institution's information technology support/services. Unless covered by such insurance,

the Institution shall not incur, and specifically disclaims, any liability related to any loss of Alumni Association data or information, regardless of fault on the part of the Institution.

2. Access to the Institution's telephone.
3. Access to the Institution's postal services

d. The Institution hereby grants the Alumni Association a royalty-free, non-exclusive, non-transferable license to use the name "Western Kentucky University" and its shortened version "WKU", as well as any marks or logos associated therewith (the "Marks"), in connection with the ordinary course of operations of the Alumni Association; however, the Alumni Association shall operate under its own seal and logotype. The Alumni Association agrees that the Marks are the sole property of the Institution and that the Alumni Association shall not acquire any rights or interest in the Marks.

e. The Institution will continue to make its employees available for use by the Alumni Association. While the Institution employs the Alumni Association's Executive Director, the Executive Director shall serve the Alumni Association at the direction of its Board of Directors.

f. The Institution shall continue to meet its obligations under that certain lease dated December 1, 2013 between the Institution and Bowling Green SPE II, Inc., as assigned to the Alumni Association on or about March 12, 2020, for Suite 2 of the Jim and Eva Martens Alumni Center, and that certain lease dated December 1, 2013 between the Institution and Bowling Green SPE II, Inc., as assigned to the Alumni Association on or about March 12, 2020, for Suites 1 and 3 of the Jim and Eva Martens Alumni Center, or any subsequent amendments or renewals thereto or thereof.

g. The Institution may provide such other support services as mutually agreed between the Institution and Alumni Association from time to time.

IV. Alumni Association Responsibilities.

In support of its charitable purpose and in consideration of the support provided by the Institution to the Alumni Association, the Alumni Association agrees to provide the following support to the Institution:

a. The Alumni Association shall maintain its tax-exempt status pursuant to 501(c)(3) and 509(a)(2) of the Internal Revenue Code, as amended.

b. The Alumni Association shall engage, support, and stimulate current students in their endeavors as students of the Institution, and encourage their involvement with the Institution upon graduation.

c. In coordination with the Institution's Office of Philanthropy and Alumni Engagement ("PAE"), the Alumni Association shall coordinate and promote activities and programming that further the mission of alumni engagement and community outreach. More specifically, in coordination with PAE, the Alumni Association shall engage alumni in service to

the Institution, recognize and honor the Institution's alumni for noteworthy accomplishments, connect current students with alumni, and encourage friends of the Institution to engage more fully with the Institution.

d. The Alumni Association's Executive Director shall regularly report to and coordinate with the Institution's Vice President of PAE on the activities of the Alumni Association.

e. To the extent the Alumni Association engages in any fundraising activity, those activities must be controlled and approved by, and coordinated with, the Institution's President, and shall be conducted solely for the benefit of the Institution's mission.

f. The Alumni Association may collect dues from its members consistent with its Bylaws, which shall be used exclusively to advance the educational mission, alumni engagement, and student recruitment and retention of the Institution.

g. For so long as the Jim and Eva Martens Alumni Center is owned by the Alumni Association, the Institution's possession and use of the entirety of the Alumni Center shall be governed by separate lease agreements between the Institution and the Alumni Association.

h. The Alumni Association shall maintain the Jim and Eva Martens Alumni Center in such condition that it continues to embody the spirit of the Institution, reflecting well on the history and traditions of the Institution, and serving as a key component of the Institution's recruiting efforts and alumni and community engagement.

i. The Alumni Association shall cause all of its endowed and quasi-endowed funds to be managed by the College Heights Foundation pursuant to that certain Memorandum of Understanding between the Alumni Association and the College Heights Foundation dated January 1, 2023, and as amended from time to time, and shall not manage or oversee any endowed or quasi-endowed funds.

j. The Alumni Association's Board of Directors shall evaluate the potential risks arising from the Alumni Association's operations and obtain commercially reasonable amounts of general liability and directors/officers' insurance.

k. The Alumni Association shall only expend funds consistent with donor intent, as a reasonable business expense, in direct furtherance of the Institution's educational mission, and otherwise consistent with applicable law.

l. The Alumni Association shall, for a reasonable time, maintain copies of plans, budgets, and donor and alumni records developed in connection with the performance of its obligations, and shall make those records available to the Institution upon reasonable request.

m. The Alumni Association shall not contract on behalf of, or serve as an agent of, the Institution on any matter without first receiving the express written consent of the Institution's President or appropriate designee.

V. Miscellaneous Terms

a. This MOU has been approved by the Board of Regents of the Institution and by the Board of Directors of the Alumni Association.

b. To ensure effective achievement of the items of the MOU, the Institution and Alumni Association officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

c. The Institution and Alumni Association may periodically review and amend this MOU as they jointly determine and agree to be necessary. Provided, however, that no amendment shall be binding or effective unless in writing and signed by duly authorized representatives of each of the Alumni Association and the Institution.

d. Either party may, upon 90 days prior written notice to the President and Board Chair of the other party, terminate this MOU. The party initiating termination of the MOU must act in good faith to provide an opportunity for a meeting to include Institution and Alumni Association executives and Board Chairs (or the Board Chairs' designees) within 30 days of initial written notice of intention to terminate the MOU.

e. If the Institution terminates this MOU, the Alumni Association may require the Institution to pay, within 90 days of written notice, all debts incurred by the Alumni Association on the Institution's behalf, including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. If the Alumni Association terminates this MOU, the Institution may require the Alumni Association to pay all debt it holds on behalf of the Institution in like manner.

f. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS MOU, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN WITNESS WHEREOF, this MOU has been duly executed by the Alumni Association and the Institution as of the date first written above.

WESTERN KENTUCKY UNIVERSITY

By: _____

Its: _____

WESTERN KENTUCKY UNIVERSITY ALUMNI ASSOCIATION, INC.

By: _____

Its: _____