



## **LEXINGTON INDUSTRIAL DEVELOPMENT AUTHORITY MEETING**

**Wednesday, November 20, 2019, 5:00 PM  
City Hall Second Floor Meeting Room  
300 East Washington Street, Lexington, Virginia**

Page

1. **Call to Order - IDA Chairman, Bruce Summers**
2. **Approval of Minutes**
  - 2.1. [October 9, 2019 IDA Minutes](#)
3. **Appointment of City Manager Jim Halasz as IDA Secretary**
  - 3.1. Appointment of City Manager Jim Halasz as IDA Secretary  
[AIR 3.1 - Pdf](#)
4. **Public Hearing and Consideration of the Lexington House Apartments Inducement Resolution - Mike Graff of McGuireWoods and Bryce Quigley of Steele Properties**
  - 4.1. Steele Lexington LLC has made a request for issuance of bonds through the IDA for tax exempt financing.  
  
Manager's Recommendation: Adopt the Resolution authorizing the issuance of up to \$9,500,000 in principal amount of revenue bonds for the acquisition, construction, rehabilitation and equipping of the approximately 78-unit Lexington House Apartments multifamily housing facility.  
[AIR 4 - Pdf](#)
5. **Consideration of Washington and Lee's Refinancing - Steve McAllister, Washington & Lee University's Vice President for Finance and Eric Ballou and Megan Gilliland of Kaufman and Canoles**
  - 5.1. Washington and Lee University has made a request for issuance of refunding bonds through the IDA for taxable financing.  
  
Manager's Recommendation: Adopt the Resolution authorizing the issuance of up to \$72,000,000 in principal amount of Educational Facilities Revenue Refunding Bonds.  
[AIR 5 - Pdf](#)
6. **Adjournment**

**Certain typesMinutes**  
**Industrial Development Authority (IDA)**  
**Of the City of Lexington, VA**  
**Wednesday, October 9, 2019, 5:00 p.m.**

IDA:

Present: Bruce Summers, Chair  
Felicia Bush  
Katie Shester  
Buddy Derrick  
Dick Halseth  
Tammi Hellwig

Also present:

Staff: Brenda Garton, Secretary  
Gary Swink, Treasurer  
Daniel Lauro, IDA Attorney

The Industrial Development Authority (IDA) met on October 9, 2019 in the Second Floor Meeting Room of City Hall. Chairman Bruce Summers called the meeting to order at 5:00 p.m.

**Approval of Minutes**

Minutes from the 1/9/2019 meeting and the 4/19/2019 meeting were approved with a reminder from D. Halseth that the minutes should be completed and sent out to the IDA within two weeks of the meeting.

**B. Derrick moved to approve the minutes for the January 9, 2019 and April 15, 2019 IDA meetings. D. Halseth seconded and the motion passed unanimously. (6/0)**

**Election of Officers**

The IDA elected Interim City Manager Garton to serve as Secretary, and Finance Director Swink to serve as Treasurer. B. Summers was nominated as Chair and D. Halseth as Vice-chair.

**B. Derrick moved to appoint B. Summers as Chair, D. Halseth as Vice-chair, Brenda Garton as Secretary, and Gary Swink as Treasurer for the IDA. T. Hellwig seconded and the motion passed unanimously. (6/0)**

**Set a date for a Public Hearing for the IDA to Consider the Lexington House Apartments Proposal**

B. Garton explained that the City of Lexington has been approached to consider a tax-exempt revenue bond issuance in support of a project to purchase and renovate Lexington House Apartments. There is a meeting planned with the residents of Lexington House in early October. At this point, the request is to bring this matter before the IDA in November and to the City Council in December. Attached to the memo in the packet are materials provided related to the project, including a summary of the project and resumes for Steele Properties and the Monroe Group. As a separate agenda item, the IDA members need to identify one or more potential dates for a meeting in November to hold the public hearing and consider approval of the Inducement Resolution. Daniel Lauro can provide more information on the process if desired.

D. Lauro said that as this is conduit financing, the IDA would not be responsible for the funds loaned if this group ultimately does not end up paying. They will run a public notice for two consecutive weeks, and at the next meeting there will be a public hearing, and IDA will be asked to consider adoption of the Inducement Resolution, which will allow this group to start the process. The applicants will then come back in January or February for the IDA to review the request in detail. He said there will be an opportunity for public input. F. Bush asked who currently owns the property in question. D. Lauro said that he could not remember the current owner of the property. Interim City Manager Garton said she was not sure that the current owner was specified. This company would purchase the tax credits, and they would have their sister company manage the apartments. B. Summers asked if any funds received through the conduit financing would be applied to both the acquisition and to the improvements. D. Lauro said that his expectation was that the funds would be applied to both. Director Swink said that was accurate. They said in order to qualify for the credits, at least 50% of the financing package must be tax exempt funds. The applicants have not provided a detailed breakdown of acquisition costs and renovation costs. Director Swink would suppose that 50% of the total cost will include some percentage of the acquisition cost. D. Lauro said due to the tax credits involved, the process will be a little longer than it might otherwise be. There will also need to be approval from a state housing agency. B. Summers asked what the responsibilities of the IDA will be at the November meeting, and subsequently at the meeting after. D. Lauro said in the November meeting for this agenda item, the IDA would need to open a public hearing. It is up to the IDA if they want the presentation as part of the public hearing or before the public hearing. The applicants are planning on attending the meeting so they will be able to speak to the project as well as answer any questions that IDA members may have for them. After the public hearing has been closed, the IDA will consider the resolution that they will have previously prepared and sent to the IDA for the agenda packet. K. Shester asked if the decision of the IDA is supposed to consider their thoughts on this project specifically, should they be focusing on what will happen to the residents during the renovation, or are they supposed to ignore that aspect. D. Lauro said they could go either way. The IDA should remember that the public does have a say on this, so if the public comes out and is completely against it, the IDA can decide against funding the project. However, that will allow them to go to the Rockbridge County EDA and possibly get funding from them. The IDA is considered a subordinate entity in a city, the members are appointed by the City Council. K. Shester asked if the City Council is willing to take this on. D. Lauro said that the City Council will consider whether to officially approve the Inducement Resolution or not. Interim City Manager Garton said that while City Council is not required to hold a public hearing, it is likely that the same members of the public will show up to that meeting as well. The IDA scheduled its meeting to hear this presentation for November 20, 2019.

**D. Halseth moved to establish November 20, 2019 at 5:00 pm as the next IDA meeting to hold a public hearing on this matter. B. Derrick seconded and the motion passed unanimously (6/0)**

### **Update on IDA Role and Responsibility for Borrowing Requests**

D. Lauro reviewed a Washington Post article covering the events in Front Royal and Warren County concerning their EDA. The IDA Act gives IDAs power as long as it is for the benefit of the community. The IDA is expected to review the bond documents, and be familiar with the terms included; however, they are not expected to get into the granular details. With the events in Warren County, IDA members will be expected to be more careful in their evaluations. B. Summers confirmed that as long as the IDA sticks with conduit financing, they should be safe from potential trouble, but if they venture into any other type of financing, they will need to increase the amount of research they do in considering the applications. B. Summers said that they only have a very narrow purview and limited responsibilities. As long as the IDA attends to those responsibilities, they will not have any problems.

### **Consideration of Proposed term Sheet**

B. Garton reviewed that at the January 2019 meeting of the IDA, Legal Counsel Daniel Lauro presented a Terms Sheet for the IDA to consider for bond issuance. In answer to questions from members of the IDA during the discussion at that meeting, he subsequently sent a memo with further details. Also, Finance Director Gary Swink prepared two spreadsheets contrasting options. All of these materials are attached for the IDA's consideration. Essentially the IDA can leave the fee structure as it currently is, postpone consideration of an alternate fee structure to a later meeting date, or decide at this meeting on a new Terms Sheet. B. Derrick was in support of an application fee as that would mean more serious applications. F. Bush asked who would be responsible for sending the bill if there was an annual fee. D. Lauro said that it would go through the Lexington finance office. Interim City Manager Garton said that another plus for charging a fee is that it gives the IDA more resources for other investments. B. Derrick asked about doing a one-time fee over the life of the bond. D. Lauro said that is possible, but it requires a lot of extra calculations, and if someone refinances or cuts a bond off early, it is possible the IDA will have over-charged the applicant. K. Shester confirmed that a local applicant cannot go to the IDA/EDA of another jurisdiction without the Lexington IDA either rejecting their application, or giving them permission to go to another jurisdiction. D. Lauro said that was correct, but that it had not been tested in court. K. Shester said that while low terms sound like they would attract more borrowers, it does not seem like that worked. So she is in favor of an annual fee with payment caps. T. Hellwig said that it was important to seriously consider what was reasonable and fair to the applicants, while also not losing resources. B. Derrick said there could be a scale for the fees, and he said that the IDA can be in a position to use tax free borrowing to do a project that would not happen otherwise. D. Lauro said that Lexington is unique in that there are borrowers who must come to the Lexington IDA before going to another jurisdiction. That means they should be sure to stay on good terms with those borrowers.

**B. Derrick moved to assess a \$2500 application fee. K. Shester seconded. The motion passed unanimously (6/0).**

**Note: T. Hellwig left the meeting.**

B. Summers suggested revisiting the fee structure in November.

**B. Derrick made a motion to charge a 1/10 of 1% annual administrative fee. D. Halseth seconded.**

K. Shester said that she is concerned that the fee without a cap will be too high. She would like to know what could be done to allow for a cap on the fees later. B. Derrick said he did not like a cap, because after a certain bond amount, everyone will pay the same. K. Shester said that she liked the marginal percentage rate, but that it would ultimately be too complicated in the long run. Director Swink said that it would be possible to have the first annual fee to not be capped, and then put a cap on the fees paid in subsequent years. A woman said that if the IDA were to approve issuance of very large bonds in the future, there would be a lot gained by changing the fee structure. As it is now, there is a difference of approximately \$3000. Interim City Manager Garton asked for clarification on what the IDA would need to do to allow for the captive borrows to go before an IDA in another jurisdiction. D. Lauro said that the IDA would either need to reject the application or give permission for the applicant to go to another jurisdiction. The applicant can ask for that permission based on the fee terms that this IDA has in place. B. Summers asked why so many jurisdictions in the valley have their cap so far below \$10,000. D. Lauro said the caps are so low because these jurisdictions tend to have smaller borrowers. D. Halseth said that a \$10,000 cap protects the big borrowers, but not the small ones.

**The motion passed (3/1/1) with B. Summers against and F. Bush abstaining.**

**D. Halseth made a motion to put a cap of \$10,000 on the annual fee, K. Shester seconded. The motion passed, with F. Bush abstaining. (4/0/1)**

D. Lauro brought up a suggestion that the IDA not charge the City of Lexington should they come to the IDA to borrow. B. Summers said that the suggestion is to accept the submitted term sheet with a couple changes. The change to Item 2 is entering the \$2500 non-refundable application fee and the cap to not exceed \$10,000. There will also be a change to paragraph #3 to state that the fees will exclude the City of Lexington.

**D. Halseth moved to accept the term sheet as modified. B. Derrick seconded. The motion passed unanimously (5/0).**

G. Swink confirmed that the term sheet just adopted will be used in the approval of the Lexington House application.

### **Update on VDOT Property Acquisition**

Interim City Manager Garton said the process is that the City will get an appraisal of the property, and VDOT will get an appraisal; then, the terms for that property will be negotiated

from those two appraisals. The City just received its appraisal, and Interim City Manager Garton had not yet had a chance to look at it. She still needs to check in with her contact at VDOT to see where they are in the process. She has also had a suggestion from the Timmons Group contact, the Planning Director Arne Glaeser, and Finance Director Gary Swink to plan a joint work session between City Council and the IDA to talk about how to manage the property, the sale of it, the negotiation, and the type of projects that would be considered. She has talked to the Mayor about it, and he suggested tacking that onto the meeting scheduled for November. B. Derrick said that would be fine, but asked what could be done if the public hearing were to take a while. Interim City Manager Garton said that if the public hearing lasted too long, the IDA could say that they will continue the meeting to another night. By not closing the meeting, and just continuing it, they would not need to advertise for the meeting again. B. Summers said he suggested time-boxing the meeting, and starting that early, before the public hearing.

**B. Derrick moved to schedule a joint work session with the Lexington City Council on November 20<sup>th</sup> at 4:00pm, assuming that date will work. D. Halseth seconded. The motion passed unanimously (5/0).**

B. Derrick asked what specifically will be discussed at the meeting. Interim City Manager Garton said that the meeting would not cover any confidential information, just basic information on the best way to transfer ownership from VDOT to the purchaser.

#### **Danter and Associates Market Analysis**

Interim City Manager said the Market Analysis Report prepared by Danter and Associates was done to assess whether certain types of use would be appropriate for a particular property and if that type of development should be considered for the Lexington area. Director Swink added that he asked the Timmons Group contact what the purpose of this report was. The contact said that once City Council had decided the process, it should help instruct the Timmons Group what the market will be. That will allow them to find the right potential partner for a project. D. Halseth said it is a sales tool.

#### **Update on IDA Balance Sheet**

Director Swink gave a brief review of the IDA balance sheet. Interim City Manager pointed out that the IDA did pay for the Market Analysis. D. Halseth asked what the Local Government Investment Pool was, inquiring whether it was all the jurisdictions in the state. Director Swink said it was most of the local governments in the commonwealth and is managed through the Virginia Department of Treasury. He said it is a very liquid fund, and local governments can deposit or withdraw money as many times a month as needed. K. Shester asked for details on the Economic Development Expense on the September 30<sup>th</sup> statement. Director Swink said it was the cost of the Market Analysis study and the cost of the Timmons Group to oversee the project. B. Summers asked about Professional Fees on the June 30<sup>th</sup> statement. He asked if those were fees charged by the IDA Bond Attorney. Director Swink said there were some fees for the

attorney, but there were also fees from the Timmons Group. B. Summers asked if D. Lauro's fees would show up in professional fees on their statement. D. Halseth asked if the IDA would need to approve all the funds, or if some of the funds are general city money. Director Swink said that he would encourage that any expenditures out of the IDA fund should be approved by the IDA. The City Council would have ultimate veto authority, but it would still be good practice for the IDA recommendations. That does bring up the question of who should pay for the property assessment of the VDOT property. Director Swink said that he is taking the position that that expenditure was not preauthorized by the IDA, so he believes that should come out of the City funds. Interim City Manager asked for clarification that the IDA knew the amounts they were authorizing when they made their preapprovals for the study in January, and this is not a request for them to authorize paying the bills. B. Summers requested clarification on approving expenditures. He asked if that meant that they would approve all the invoices. D. Halseth said that he did not think the invoices would need to be approved, just the expenditures. B. Summers said that they have approved Daniel Lauro as the IDA lawyer, for example, but he did not think there had been any limits on the expenditures for the fees. He also said the consulting fees can be a large item, but he is not sure the IDA needs to approve 2.5 hours of their lawyer's time. D. Halseth said that was not his point, his point was that the IDA should be in control of their funds. K. Shester said there was some trust on the part of consultants, there should be a way to make sure they aren't being overcharged as far as someone's time goes.

### **Adjournment**

Chairman Bruce Summers adjourned the meeting at 6:43 p.m.

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Bruce Summers, IDA Chair

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James M. Halasz, Secretary



## **Industrial Development Authority Meeting Agenda Item Report**

**Report Title:**

**Subject:** Appointment of City Manager Jim Halasz as IDA Secretary

**Meeting:** Industrial Development Authority Meeting - 20 Nov 2019

**Department:**

**Staff Contact:**

**BACKGROUND INFORMATION:**

The Lexington City Manager has traditionally served as the Secretary of the Industrial Development Authority (IDA). With the appointment of new City Manager, Jim Halasz, it is suggested that the IDA appoint Jim Halasz as the IDA Secretary.

**RECOMMENDATION:**

Appoint Jim Halasz, City Manager, as the Secretary of the IDA.





## **Industrial Development Authority Meeting Agenda Item Report**

**Report Title:**

**Subject:** Steele Lexington LLC has made a request for issuance of bonds through the IDA for tax exempt financing.

**Meeting:** Industrial Development Authority Meeting - 20 Nov 2019

**Department:**

**Staff Contact:**

### **BACKGROUND INFORMATION:**

At the last meeting of the IDA, information from Steele Lexington LLC was presented on their plans to acquire and renovate the Lexington House Apartments. They plan to rehabilitate and equip 78 low-income residential units. Their request is for the issuance of up to \$9,500,000 in revenue bonds. Representatives of the borrower will be present to further explain their request and to answer any questions the IDA may have.

The IDA will be required to hold a public hearing, prior to acting upon the Resolution (referred to as an Inducement Resolution). Notice of the hearing has been published as required. At the conclusion of the hearing, the IDA may properly consider the Resolution included in your agenda packet. Other materials included in your packet include a summary of the financing request, the notice of public hearing, proposed letter of IDA approval to City Council, Certificate of the IDA, the Fiscal Impact Statement, and the suggested Resolution to be adopted by City Council. City staff and our bond counsel have reviewed these documents.

Assuming that the IDA acts favorably upon this request, City Council will need to take action to concur with the IDA's approval. Then, closer to the date of anticipated bond issuance (likely mid-January), the IDA will need to approve the final terms of the bond documents.

### **FINANCIAL IMPACT:**

The borrower will be responsible for reimbursing the costs of the IDA in issuing the bonds, including costs of our counsel. They have been made aware of, and have agreed with, the term sheet for issuance fees.

### **RECOMMENDATION:**

Manager's Recommendation: Adopt the Resolution authorizing the issuance of up to \$9,500,000 in principal amount of revenue bonds for the acquisition, construction, rehabilitation and equipping of the approximately 78-unit Lexington House Apartments multifamily housing facility.

### **ATTACHMENTS:**

[Lexington House Apartments Proposal Letter](#)  
[Lexington House Apartments](#)



## RE: Proposed City of Lexington IDA Tax Exempt Industrial Revenue Bonds

### **Acquisition & Steele/Monroe**

Steele Lexington LLC is in the process of acquiring, and then planning to renovate, Lexington House Apartments located at 130 Houston Street, Lexington, VA 24450. The property consists of 78 units which are currently designated for elderly or disabled residents in Lexington, VA. The property is 100% covered by a Project Based Section 8 HAP Contract which subsidizes the resident-paid portion of the rent due each month at this affordable property. Steele Properties, an affiliate of Steele Lexington LLC (the newly created entity to hold the real estate once the closing occurs), specializes in the acquisition and rehabilitation of Project Based Section 8 HAP communities across the country. Following the closing, which is expected to occur in February of 2020, the property will be managed by Monroe Group, Steele's sister company who manages its affordable portfolio of properties nation-wide. Steele and Monroe collectively own and manage over 65 multifamily affordable properties across 20 states throughout the country. Attached for reference are resumes on Steele and Monroe detailing their mission and experience in the affordable housing industry.

### **Low-Income Housing Preservation**

Project Based Section 8 HAP communities serve the lowest income residents in their area and consist of residents who have income anywhere from 0% to 60% of the Area Median Income (AMI) for the county in which they exist. As part of the acquisition, the existing HAP contract will be extended for a period of 20 years from the closing date ensuring that the property will remain affordable for the foreseeable future. Additionally, to finance the acquisition Steele will seek a 4% Low Income Housing Tax Credit (LIHTC) allocation from the Virginia Housing Development Authority (VHDA). As a condition of the LIHTC award, the site will record a Land Use Restriction Agreement (LURA) that will require the site remain affordable to residents who earn no greater than 60% AMI for a period of 30 years from the closing date. As such, the acquisition and renovation will ensure that this valuable resource of 78 low income housing units remain in place in Lexington for years to come. This is especially prudent as we continue to see the existing low income housing stock across the country deteriorate or be converted to market rate housing.

### **Industrial Revenue Bond Issuance (Tax Exempt Financing)**

A requirement of the issuance of 4% LIHTC's is that any renovation or new construction financed by such tax credits be at least 50% financed by tax exempt bonds. As such, Steele is seeking a tax exempt revenue bond issuance from the City of Lexington IDA to ensure that the tax credits can be awarded in order for the renovation to take place. Steele is seeking a "not to exceed" revenue bond issuance of up to \$9,500,000. The revenue bonds are conduit "pass-thru" bonds payable only by the applicant and the project. As such, neither the IDA nor the City have any liability for the bonds. In order to ensure that Steele can satisfy all bond tests required, they will be seeking an Inducement Resolution from the IDA in early November 2019. In order for the Inducement to be granted there will need to be a formal IDA meeting held as well as a public meeting held (known as the TEFRA) giving the residents, or other citizens, the chance to comment on the project. Steele is meeting with the residents on October 9<sup>th</sup> to let



them know about the pending sale and planned renovations and to field any questions the residents have about either. Within 60 days of the approval of the Inducement Resolution, the City Council will need to issue a final approval of the IDA revenue bond financing. Steele is anticipating that the final approval of the financing will occur at an IDA meeting sometime in January of 2020.

### **Renovation Plan**

As a result of the 4% LIHTC allocation (enabled by the tax exempt bond issuance) Steele is planning to complete a significant renovation of Lexington House Apartments which will result in over \$3,100,000 in hard cost renovation to the individual units and community as a whole. The unit upgrades will include; new bathroom sinks, water sense fixtures, low-flow toilets, bath/shower valve trim, tub remodels & shower head replacement, refrigerator replacement, LED lighting replacement for all fixtures, replacement of existing HVAC systems and water heaters with high efficiency units, flooring replacement and interior painting in the kitchens and bathrooms, new entry door hardware along with replacement of damaged doors, full cabinet & countertop replacement, window treatments, new wireless CO2/smoke detectors and the addition of ceiling fans in the living rooms. Community exterior and interior upgrades will include; railing installation in hallways, new shingles and full TPO replacement on roofs, flashing & trim replacement, gutter & downspout addition/replacement, exterior door repairs, painting of exterior catwalks, balconies and common stairwells, signage replacement, waste compactor replacement, community room/leasing office upgrades, elevator upgrades/modernization, exterior LED lighting replacement, asphalt paving repair, new sealcoat & striping in parking lots, accessible path development, patio replacement/repair, concrete sidewalk repairs & accessible path development, misc. lawn and landscaping repair and sewer line jetting. In addition to all of these repairs, four (4) units will be converted to accessible units to ensure that a minimum of 5% of the units at the property comply with all federal accessibility standards.

**NOTICE OF PUBLIC HEARING BEFORE THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA ON PROPOSED  
PRIVATE ACTIVITY BOND FINANCING FOR STEELE LEXINGTON LLC**

Notice is hereby given that the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”), whose address is 300 E. Washington Street, Lexington, Virginia 24450, will hold a public hearing on the request of Steele Lexington LLC, a Virginia limited liability company (the “Borrower”), whose address is c/o Steele Properties, 6875 East Evans Avenue, Denver, Colorado 80224, for the issuance by the Authority of up to \$9,500,000 of its revenue bonds to (a) finance or refinance a portion of the cost of acquiring, constructing, rehabilitating and equipping a multifamily residential rental housing project known as Lexington House Apartments (the “Project”), consisting of 1 building containing approximately 78 residential units, representing approximately 42,282 net rentable square feet, located on approximately 1.98 acres of land at 130 Houston Street, Lexington, Virginia 24450 and (b) finance certain costs of issuance, funding of any required reserves and other financeable expenditures. The Project will meet the requirements of a qualified residential rental project within the meaning of Section 142(d) of the Internal Revenue Code of 1986, as amended. The Project will be owned and/or operated by the Borrower or an entity related to the Borrower. The public hearing, which may be continued or adjourned, will be held at 5:00 p.m., or as soon thereafter as may be heard, on Wednesday, November 20, 2019 before the Authority in the Community Room at Lexington City Hall located at 300 E. Washington Street, Lexington, Virginia 24450.

The proposed private activity bonds will not pledge the credit or the taxing power of the Commonwealth of Virginia, the City of Lexington, Virginia or the Authority but will be payable solely from the revenues derived from the Borrower and pledged therefor.

The public hearing will provide an opportunity for interested persons to be heard and communications and writings to be received and considered. The hearing shall provide the fullest opportunity for the expression of opinion, for argument on the merits, and for the introduction of documentary evidence pertinent to the issuance of the proposed private activity bonds.

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA

Published November 6 and November 13, 2019

November 20, 2019

City Council  
City of Lexington, Virginia  
300 E. Washington Street  
Lexington, Virginia 24450

**Industrial Development Authority of the City of Lexington, Virginia  
Proposed Financing for Steele Lexington LLC**

Steele Lexington LLC, a Virginia limited liability company (the “Borrower”), has requested that the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”), issue up to \$9,500,000 of its revenue bonds (the “Bonds”) to assist the Borrower in financing and refinancing certain costs of the acquisition, construction, rehabilitation and equipping of a multifamily residential rental housing project known as Lexington House Apartments (the “Project”), consisting of 1 building containing approximately 78 residential units, located on approximately 1.98 acres of land at 130 Houston Street, Lexington, Virginia 24450.

As set forth in the resolution of the Authority attached hereto (the “Resolution”), the Authority has agreed to issue the Bonds as requested. The Authority has conducted a public hearing (the “Public Hearing”) on the proposed financing of the Project and has recommended that you approve the issuance of the Bonds as required by Section 147(f) of the Internal Revenue Code of 1986, as amended, and Section 15.2-4906 of the Code of Virginia of 1950, as amended (the “Virginia Code”).

Attached hereto is (1) a certificate evidencing the conduct of the public hearing and the action taken by the Authority, including a reasonably detailed summary of the comments expressed at the public hearing, (2) the fiscal impact statement required pursuant to Virginia Code Section 15.2-4907 and (3) the form of resolution suggested by counsel to evidence your approval.

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Secretary, Industrial Development Authority of  
the City of Lexington, Virginia

CERTIFICATE

The undersigned Secretary of the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”) certifies as follows:

1. A meeting of the Board of Directors of the Authority (the “Board”) was duly called and held at 5:00 p.m. or thereafter on November 20, 2019 before the Authority in the Community Room at Lexington City Hall located at 300 E. Washington Street, Lexington, Virginia 24450, pursuant to proper notice given to each member of the Authority before such meeting. The meeting was open to the public. The time of the meeting and the place at which the meeting was held provided a reasonable opportunity for persons of differing views to appear and be heard.

2. The Chair of the Board announced the commencement of a public hearing on the application of Steele Lexington LLC, and that a notice of the hearing was published once a week for two successive weeks in a newspaper having general circulation in the City of Lexington, Virginia (the “Notice”), with the second publication appearing not less than seven days nor more than twenty-one days prior to the hearing date. A copy of the Notice has been filed with the records of the Authority and is attached as Exhibit A.

3. A reasonably detailed summary of the statements made at the public hearing is attached as Exhibit B.

4. Attached as Exhibit C is a true, correct and complete copy of a resolution (“Resolution”) adopted at such meeting of the Authority by a majority of the members of the Board present at such meeting. The Resolution constitutes all formal action taken by the Authority at such meeting relating to the matters referred to in the Resolution. The Resolution has not been repealed, revoked, rescinded or amended and is in full force and effect on this date.

WITNESS my hand and the seal of the Authority, this 20<sup>h</sup> day of November, 2019.

\_\_\_\_\_  
Secretary, Industrial Development Authority of  
the City of Lexington, Virginia

[SEAL]

Exhibits:

A – Copy of Certified Notice of Public Hearing

B – Summary of Statements

C – Resolution

**EXHIBIT A**

**CERTIFICATE OF PUBLICATION OF NOTICE OF PUBLIC HEARING**

[To be attached]



**EXHIBIT B**

**SUMMARY OF STATEMENTS**

Representatives of Steele Lexington LLC and McGuireWoods LLP, bond counsel, appeared before the Authority to explain the proposed plan of financing. No one appeared in opposition to the proposed bond issue.

**INDUCEMENT RESOLUTION**

RESOLUTION OF  
THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON,  
VIRGINIA AUTHORIZING THE ISSUANCE OF UP TO \$9,500,000 IN PRINCIPAL  
AMOUNT OF REVENUE BONDS FOR THE ACQUISITION, CONSTRUCTION,  
REHABILITATION AND EQUIPPING OF THE APPROXIMATELY 78-UNIT  
LEXINGTON HOUSE APARTMENTS MULTIFAMILY HOUSING FACILITY  
LOCATED IN THE CITY OF LEXINGTON, VIRGINIA

WHEREAS, the Industrial Development and Revenue Bond Act (the “Act”), Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Virginia Code”) empowers industrial development authorities, such as the Industrial Development Authority of the City of Lexington, Virginia, a political subdivision of the Commonwealth of Virginia (the “Authority”), created by municipalities whose housing authorities have not been activated pursuant to the Housing Authorities Law, Chapter 1, Title 36 of the Virginia Code to issue bonds to make loans for the purpose of financing certain facilities used primarily for single and multifamily residences in order to promote safe and affordable housing in the Commonwealth of Virginia (the “Commonwealth”) and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth; and

WHEREAS, the Authority has received a request from Steele Lexington LLC, a Virginia limited liability company (the “Borrower”), requesting that the Authority issue its revenue bonds to assist the Borrower in (a) financing and refinancing a portion of the cost of acquiring, constructing, rehabilitating and equipping a multifamily residential rental housing project known as Lexington House Apartments (the “Project”), consisting of 1 building containing approximately 78 residential units, representing approximately 42,282 net rentable square feet, located on approximately 1.98 acres of land at 130 Houston Street, Lexington, Virginia 24450, such Project to be owned and/or operated by the Borrower or an entity related to the Borrower and (b) financing certain costs of issuance, funding of any required reserves and other financeable expenditures (collectively with (a) above, the “Plan of Finance”); and

WHEREAS, such assistance will induce the Borrower to construct and maintain the Project in Virginia and benefit the inhabitants of the City of Lexington, Virginia (the “City”) and the Commonwealth through the promotion of their safety, health, welfare, convenience or prosperity; and

WHEREAS, preliminary plans for the Project and the Plan of Finance have been described to the Authority and, on November 20, 2019, a public hearing has been held as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), and Section 15.2-4906 of the Act; and

WHEREAS, the Borrower has represented that the estimated cost of the Plan of Finance, including all expenses of the issue, will require an issue of tax-exempt and taxable revenue bonds in the aggregate principal amount not to exceed \$9,500,000 (the “Bonds”); and

WHEREAS, (a) no member of the Board of Directors of the Authority (the “Board”) is an officer or employee of the City, (b) each member of the Board has, before entering upon his or her duties during his or her present term of office, taken and subscribed to the oath prescribed by

Section 49-1 of the Virginia Code, and (c) at the time of their appointments and at all times thereafter, including the date hereof, all of the members of the Board have satisfied the residency requirements of the Act; and

WHEREAS, no member of the Board has any personal interest or business interest in the Borrower, the Bonds or any of the transactions contemplated therein or has otherwise engaged in conduct prohibited under the State and Local Government Conflict of Interests Act, Chapter 31, Title 2.2 of the Virginia Code in connection with this resolution or any other official action of the Authority in connection therewith.

NOW, THEREFORE, BE IT RESOLVED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA:

1. It is hereby found and determined that the financing of the Project and the Plan of Finance will be in the public interest and will promote the commerce, safety, health, welfare, convenience or prosperity of the Commonwealth, the City and their citizens.

2. To induce the Borrower to acquire, construct, rehabilitate and maintain the Project in the Commonwealth, and particularly in the City, the Authority hereby agrees to assist the Borrower in financing the Plan of Finance as permitted by applicable law, by undertaking the issuance of the Bonds in a maximum principal amount of \$9,500,000 upon terms and conditions mutually agreeable to the Authority and the Borrower. The Bonds will be issued pursuant to documents satisfactory to the Authority. The Bonds may be issued in one or more series at one time or from time to time.

3. It having been represented to the Authority that it is necessary to proceed immediately with the financing of the Plan of Finance, the Authority agrees that the Borrower may proceed with plans for the Project, enter into contracts for land, construction, materials and equipment for the Project, and take such other steps as it may deem appropriate in connection with the Project and the Plan of Finance, provided, however, that nothing in this resolution shall be deemed to authorize the Borrower to obligate the Authority without its consent in each instance to the payment of any moneys or the performance of any acts in connection with the Project or the Plan of Finance. The Authority agrees that the Borrower may be reimbursed from the proceeds of the Bonds for all expenditures and costs so incurred by it, provided such expenditures and costs are properly reimbursable under the Act and applicable federal laws.

4. At the request of the Borrower, the Authority approves McGuireWoods LLP, Tysons, Virginia as bond counsel (“Bond Counsel”) in connection with the issuance of the Bonds.

5. All costs and expenses in connection with the Plan of Finance, including the fees and expenses of the Authority, Bond Counsel and counsel to the Authority, shall be paid by the Borrower or, to the extent permitted by applicable law, from the proceeds of the Bonds. If for any reason the Bonds are not issued, it is understood that all such expenses shall be paid by the Borrower and that the Authority shall have no responsibility therefor.

6. In adopting this resolution the Authority intends to take “official action” toward the issuance of the Bonds and to evidence its “official intent” to reimburse from the proceeds of the Bonds any expenditures paid by the Borrower to finance the Project before the issuance of the

Bonds, all within the meaning of regulations issued by the Internal Revenue Service pursuant to Sections 103 and 141 through 150 and related sections of the Internal Revenue Code.

7. The Authority recommends that the City Council of the City approve the issuance of the Bonds.

8. Each of the Chair, the Vice Chair, the Treasurer and the Secretary of the Authority, any of whom may act alone, is hereby authorized to request an allocation or allocations of the State Ceiling (as defined in Section 15.2-5000 of the Virginia Code) in accordance with the applicable provisions of the Virginia Code and any regulations or executive orders issued thereunder. All costs incurred by the Authority, if any, in connection with such proceeding shall be paid for by the Borrower.

9. No Bonds may be issued pursuant to this resolution until such time as (a) the issuance of the Bonds has been approved by the City Council of the City, (b) the Bonds have received an allocation or allocations of the State Ceiling in accordance with the applicable provisions of the Virginia Code and any regulations or executive orders issued thereunder and (c) the final terms and details of the Bonds have been approved by subsequent resolution of the Authority.

10. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project, the Plan of Finance or the Borrower. The issuance of revenue bonds as requested by the Borrower will not constitute a debt or pledge of the faith and credit of the Commonwealth or the City, and neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision of the Commonwealth, including the City, will be pledged to the payment of such Bonds. Neither the City nor the Authority shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from revenues and money pledged therefor.

11. Any obligation of the Authority to exercise its powers to issue the Bonds as requested by the Borrower is contingent upon the satisfaction of all legal requirements, and the Authority (including its officers, directors, employees and agents) shall not be liable and hereby disclaims all liability to the Borrower and all other persons or entities for any damages, direct or consequential, resulting from the issuance of the Bonds or failure of the Authority to issue the Bonds for any reason, including but not limited to, the failure of the City Council of the City to approve the issuance of the Bonds. Neither the directors, officers, agents or employees of the Authority, past, present and future shall be personally liable on the Bonds.

12. The Borrower, by acceptance of this resolution, agrees to indemnify and save harmless the Authority, its officers, directors, employees and agents from and against all liabilities, obligations, claims, damages, penalties, losses, costs and expenses in any way connected with (a) the Project and the Plan of Finance, (b) any application submitted by the Borrower or (c) the issuance of the Bonds.

13. The Borrower has represented to the Authority that: (a) the Borrower has paid or will pay to the Authority an application fee equal to \$2,500; and (b) the Borrower will (i) pay to the Authority on each anniversary of the date of issuance of the Bonds (each an "Anniversary Date") an annual administrative fee (the "Annual Fee") equal to the lesser of one tenth of one percent of

the principal amount of Bonds outstanding on such Anniversary Date or \$10,000 and (ii) provide the Authority with an annual debt service schedule for the Bonds in order to enable the Authority to compute the Annual Fee.

14. This resolution shall take effect immediately upon its adoption.

CERTIFICATE

Record of the roll-call vote by the City Council of the City of Lexington, Virginia, (the “Council”) upon reading on a resolution titled **“RESOLUTION APPROVING THE ISSUANCE BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA OF ITS REVENUE BONDS FOR THE ACQUISITION, CONSTRUCTION, REHABILITATION AND EQUIPPING OF THE APPROXIMATELY 78-UNIT LEXINGTON HOUSE APARTMENTS MULTIFAMILY HOUSING FACILITY LOCATED IN THE CITY OF LEXINGTON, VIRGINIA,”** taken at a meeting of the Council held on \_\_\_\_\_, 2019:

	AYE	NAY	ABSTAIN	ABSENT
Frank W. Friedman, Mayor				
Marylin E. Alexander				
Dennis W. Ayers				
Michele F. Hentz				
David G. Sigler				
Charles Smith				
Leslie C. Straughan				

The undersigned Secretary of the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”) certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Directors of the Authority present and voting at a meeting duly called and held on November 20, 2019, in accordance with law, and that such resolution has not been repealed, revoked, rescinded or amended but is in full force and effect on this date.

WITNESS the following signature and seal of the Authority, this 20<sup>th</sup> day of November, 2019.

\_\_\_\_\_  
Secretary of the Industrial Development Authority  
of the City of Lexington, Virginia

[SEAL]

FISCAL IMPACT STATEMENT  
FOR PROPOSED BOND FINANCING

Date: November 20, 2019

To the City Council  
of the City of Lexington, Virginia

Applicant: Steele Lexington LLC

Facility: Multifamily Housing Facility known as Lexington House Apartments

1.	Maximum amount of financing sought.	\$	9,500,000
2.	Estimated taxable value of the facility's real property to be constructed in the locality.	\$	4,250,000
3.	Estimated real property tax per year using present tax rates.	\$	38,000
4.	Estimated personal property tax per year using present tax rates.	\$	N/A
5.	Estimated merchants' capital tax per year using present tax rates.	\$	N/A
6.	(a) Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality.	\$	10,000
	(b) Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality.	\$	8,000
	(c) Estimated dollar value per year of services that will be purchased from Virginia companies within the locality.	\$	8,000
	(d) Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality.	\$	2,000
7.	Estimated number of regular employees on year round basis.		2
8.	Average annual salary per employee.	\$	42,500

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Chair, Industrial Development Authority of the City  
of Lexington, Virginia

In completing this Fiscal Impact Statement, the Authority has relied upon representations made by the Applicant.



**RESOLUTION APPROVING THE ISSUANCE BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA OF ITS REVENUE BONDS FOR THE ACQUISITION, CONSTRUCTION, REHABILITATION AND EQUIPPING OF THE APPROXIMATELY 78-UNIT LEXINGTON HOUSE APARTMENTS MULTIFAMILY HOUSING FACILITY LOCATED IN THE CITY OF LEXINGTON, VIRGINIA**

WHEREAS, the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”) is authorized to advertise and hold public hearings relative to the issuance of private activity bonds; and

WHEREAS, the Authority (a) has considered the application of Steele Lexington LLC, a Virginia limited liability company (the “Borrower”), requesting that the Authority issue up to \$9,500,000 of its revenue bonds (the “Bonds”) to assist the Borrower in financing or refinancing (i) the acquisition, construction, rehabilitation and equipping of a multifamily residential rental housing project known as Lexington House Apartments (the “Project”), consisting of 1 building containing approximately 78 residential units, representing approximately 42,282 net rentable square feet, located on approximately 1.98 acres of land at 130 Houston Street, Lexington, Virginia 24450, such Project to be owned and/or operated by the Borrower or an entity related to the Borrower and (ii) certain costs of issuance, funding of any required reserves and other financeable expenditures (collectively with (i) above, the “Plan of Finance”) and (b) has held a public hearing in connection therewith on November 20, 2019; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), provides that the applicable elected representatives of the governmental unit having jurisdiction over the issuer of private activity bonds must approve the issuance of such bonds;

WHEREAS, the Authority issues its bonds on behalf of the City of Lexington, Virginia (the “City”); and

WHEREAS, the Authority, as the issuing governmental unit with respect to the Bonds, has no applicable elected representative, the City constitutes the next highest governmental unit with such a representative, and the members of the City Council of the City (the “Council”) constitute the applicable elected representatives of the City; and

WHEREAS, the Authority has previously held a public hearing regarding the Project and adopted a resolution authorizing in principle the issuance of the Bonds; and

WHEREAS, the Authority has recommended that the Council approve the issuance of the Bonds; and

WHEREAS, a copy of the Authority’s resolution authorizing the issuance of the Bonds, subject to the terms to be agreed upon, a Fiscal Impact Statement complying with the requirements of Section 15.2-4907 of the Code of Virginia of 1950, as amended (the “Virginia

Code”), a certificate of publication of the public hearing, and a reasonably detailed summary of the statements made at the public hearing have been filed with the Council; and

WHEREAS, the Bonds, as exempt facility bonds issued under Section 142(d) of the Internal Revenue Code will necessitate that the Authority, on behalf of the Borrower, apply for and secure an allocation of private activity housing bond volume cap (the “Allocation”) for the Plan of Finance in order for interest on the Bonds to be exempt from the imposition of federal income tax.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEXINGTON, VIRGINIA THAT:

1. The Council approves the issuance of the Bonds by the Authority for the benefit of the Borrower, as required by Section 147(f) of the Internal Revenue Code and Section 15.2-4906 of the Virginia Code to permit the Authority to assist in the financing of the Plan of Finance. Each of the City Manager, Interim City Manager and Clerk of Council are hereby authorized to take such further actions and execute and deliver such other documents, instruments, or certificates as are not inconsistent with this resolution and may be necessary or appropriate to secure the Allocation and otherwise for the issuance of the Bonds by the Authority.

2. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project, the Plan of Finance or the Borrower.

3. The Bonds shall provide that neither the Commonwealth of Virginia nor the City nor the Authority shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from the revenues and monies pledged thereto and that neither the faith and credit nor the taxing power of the Commonwealth of Virginia nor the City is pledged to the payment of the principal of the Bonds or the interest thereon or other costs incident thereto.

4. In adopting this resolution, the City, including its elected representatives, officers, employees and agents, shall not be liable for, and hereby disclaim all liability for, any damages to any person, direct or consequential, resulting from the Authority’s failure to issue the Bonds for any reason.

5. This resolution shall take effect immediately upon its adoption.

Adopted by the City Council of the City of Lexington, Virginia this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CERTIFICATE**

Record of the roll-call vote by the City Council of the City of Lexington, Virginia, (the “Council”) upon reading on a resolution titled **“RESOLUTION APPROVING THE ISSUANCE BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA OF ITS REVENUE BONDS FOR THE ACQUISITION, CONSTRUCTION, REHABILITATION AND EQUIPPING OF THE APPROXIMATELY 78-UNIT LEXINGTON HOUSE APARTMENTS MULTIFAMILY HOUSING FACILITY LOCATED IN THE CITY OF LEXINGTON, VIRGINIA,”** taken at a meeting of the Council held on \_\_\_\_\_, 2019.

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Frank W. Friedman, Mayor				
Marylin E. Alexander				
Dennis W. Ayers				
Michele F. Hentz				
David G. Sigler				
Charles Smith				
Leslie C. Straughan				

The undersigned Clerk of the City Council of the City of Lexington, Virginia, hereby certifies that the foregoing is a true, correct, and complete copy of a resolution adopted by the Council at its meeting duly called and held on \_\_\_\_\_, 2019, in accordance with law, and that such resolution has not been repealed, revoked, rescinded, or amended, but is in full force and effect as of the date hereof.

**WITNESS** my hand and the seal of the City of Lexington, Virginia this \_\_\_\_ day of \_\_\_\_\_, 2019.

[SEAL]

\_\_\_\_\_  
 Clerk, City Council of the City of  
 Lexington, Virginia



## **Industrial Development Authority Meeting Agenda Item Report**

**Report Title:**

**Subject:** Washington and Lee University has made a request for issuance of refunding bonds through the IDA for taxable financing.

**Meeting:** Industrial Development Authority Meeting - 20 Nov 2019

**Department:**

**Staff Contact:**

### **BACKGROUND INFORMATION:**

The University has requested the IDA issue up to \$72,000,000 in principal of bonds to be used to refund their Series 2013 Educational Facilities Revenue Bonds issued through the IDA and Series 2015A Educational Facilities Revenue Bonds issued by the Virginia College Building Authority. Representatives from the University will be present to explain their request and to answer questions. Since this is an advance refunding, only taxable bonds may be issued. The issuance of taxable bonds do not require a public hearing to be held by the IDA and do not require the approval of City Council. As a courtesy to City Council staff plans to advise Council of the IDA's action on this matter.

Drafts of the following documents are included in your agenda packet and have been reviewed by staff and our counsel: Resolution Authorizing the Issuance of the Bonds; the Preliminary Official Statement; Indenture of Trust; and the Loan Agreement (with the form of the Promissory Note). A draft of the Bond Purchase Agreement is to be provided at your meeting.

### **FINANCIAL IMPACT:**

The borrower will be responsible for reimbursing the costs of the IDA in issuing the bonds, including costs of our counsel. They have been made aware of, and have agreed with, the term sheet for issuance fees. We are in receipt of their \$2,500 application fee.

### **RECOMMENDATION:**

Manager's Recommendation: Adopt the Resolution authorizing the issuance of up to \$72,000,000 in principal amount of Educational Facilities Revenue Refunding Bonds.

### **ATTACHMENTS:**

[W&L 2019 Bonds IDA of City of Lexington Resolution](#)

[W&L 2019 Preliminary Official Statement](#)

[W&L 2019 Bonds Indenture of Trust](#)



**RESOLUTION AUTHORIZING THE ISSUANCE OF  
EDUCATIONAL FACILITIES REVENUE REFUNDING BONDS  
(WASHINGTON AND LEE UNIVERSITY), SERIES 2019,  
BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE  
CITY OF LEXINGTON, VIRGINIA AND RELATED MATTERS**

**WHEREAS**, the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”) is duly organized under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”), which authorizes the Authority to issue bonds and to loan bond proceeds for the purposes of financing or refinancing facilities for use by organizations (other than those organized and operated exclusively for religious purposes) which are described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and are exempt from federal income taxation pursuant to Section 501(a) of the Code, including facilities for private, accredited and nonprofit institutions of collegiate education in the Commonwealth of Virginia whose primary purpose is to provide collegiate education and not to provide religious training or theological education;

**WHEREAS**, The Washington and Lee University (the “University”) is a nonprofit Virginia non-stock corporation, described in Section 501(c)(3) of the Code and exempt from taxation pursuant to Section 501(a) of the Code, and a private, accredited and nonprofit institution of higher education whose primary purpose is to provide collegiate education and not to provide religious training or theological education;

**WHEREAS**, the University has requested that the Authority issue its Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019 [Federally Taxable] (the “2019 Bonds”), in an aggregate principal amount not to exceed \$72,000,000, and to loan the proceeds of such 2019 Bonds to the University to assist the University in:

(a) refunding all or a portion of the Authority’s \$34,960,000 Educational Facilities Revenue Bonds (Washington and Lee University), Series 2013 (the “Series 2013 Bonds”), issued to (i) finance various capital improvements at the University, including (A) the renovation of existing buildings providing student housing and related landscape improvements (Gaines Hall, Graham-Lee Dorms and the adjoining courtyard); and (B) various projects pursuant to the University’s Annual Capital Plan; and (ii) pay costs of issuance of the Series 2013 Bonds (collectively, the “2013 Project”);

(b) refunding all or a portion of the \$32,040,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2015A (the “Series 2015A Bonds”), issued by the Virginia College Building Authority (“VCBA”) to (i) refund a portion of VCBA’s Educational Facilities Revenue Bonds (Washington and Lee University), Series 2006 (the “Series 2006 Bonds”) originally issued to (X) finance various capital improvements at the University, (Y) refund the outstanding amount of VCBA’s Educational Facilities Revenue Bonds (The Washington and Lee University Project), Series 1994, and (Z) pay costs of issuing the Series 2006 Bonds, (ii) finance a portion of the costs of various capital projects, including (A) construction and equipping of seventeen apartment and townhouse-style buildings for student housing for approximately 336 students, (B) construction of a new pedestrian bridge crossing Woods Creek connecting pedestrian pathways between Leyburn

Library and the Law School, (C) renovations and improvements to the University's athletic fields, (D) renovation, construction and equipping of certain existing indoor athletic facilities, and (E) remodeling, renovation and equipping of various capital improvements in buildings throughout Campus, such improvements including, but not limited to, updating mechanical systems, health and safety systems, and ventilation systems, updating and modernizing existing student housing, and updating building layouts; and (iii) pay costs of issuance of the Series 2015A Bonds (collectively, the "2015A Project" and together with the 2013 Project, the "Refinanced Projects"); and

(c) financing costs of issuance, funded interest, if any, and reserves, if any, with respect to the 2019 Bonds; and

**WHEREAS**, there have been presented to this meeting drafts of the following documents (the "Bond Documents"), which the Authority proposes to execute or approve to carry out the issuance and sale of the 2019 Bonds, copies of which instruments shall be filed with the records of the Authority:

(a) Preliminary Official Statement (the "Preliminary Official Statement") for the sale of the 2019 Bonds;

(b) Bond Purchase Agreement (the "Bond Purchase Agreement") between the Authority, the University and Wells Fargo Bank, National Association, as underwriter (together with such other financial institution as the University may hereafter designate to assist in the sale of the 2019 Bonds, the "Underwriter");

(c) Indenture of Trust (the "Indenture") between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), including the form of the 2019 Bonds;

(d) Loan Agreement (the "Loan Agreement") between the Authority and the University;

(e) The University's promissory note to be issued in the principal amount of the 2019 Bonds (the "Note"), including the form of assignment thereof from the Authority to the Trustee.

**NOW, THEREFORE**, after careful consideration and in furtherance of the public purposes for which the Authority was created, **BE IT RESOLVED, THAT:**

**1. Determination and Agreement to Issue.** The foregoing recitals are approved by the Authority and are incorporated in, and deemed a part of, this Resolution. The Authority determines that issuance of the 2019 Bonds in accordance with the terms of the Bond Documents and all actions of the Authority contemplated thereunder will be in furtherance of the purposes for which the Authority was organized. In order to assist the University in refinancing the Refinanced Projects, the Authority hereby agrees to undertake the issuance of the 2019 Bonds, and to loan the proceeds thereof to the University upon terms and conditions described in the Bond Documents.

**2. Undertaking of Refinancing.** It having been represented to the Authority that it is necessary to proceed immediately, subject to market conditions, with the refinancing the Refinanced Projects, the Authority hereby agrees that the University may proceed with plans for,

and enter into contracts involving, refinancing the Refinanced Projects, and take such other steps as it may deem appropriate in connection therewith, provided, however, that nothing herein shall be deemed to authorize the University to obligate the Authority without its consent in each instance to the payment of any moneys or the performance of any acts in connection with the Refinanced Projects. The Authority agrees that the University may be reimbursed from the proceeds of the 2019 Bonds for all expenditures and costs including issuance costs so incurred by it, provided such expenditures and costs are properly reimbursable under the Act and other applicable state and federal laws.

**3. Authorization and Issuance.** The Authority hereby authorizes issuance of the 2019 Bonds substantially upon the terms set forth therein and in the Indenture, provided the 2019 Bonds shall be in an aggregate principal amount not to exceed \$72,000,000. The 2019 Bonds shall have such principal amounts and maturities, bear such date or dates, bear interest at such rate or rates, be payable at such times or times and be sold in one or more series or subseries in such manner and on such terms as approved by the Chairman or the Vice Chairman of the Authority, at the request of the University, subject to the following limitations requested by the University: the 2019 Bonds shall have a true interest cost (including any original issue premium or discount) not to exceed 4.00% per annum; and the 2019 Bonds shall mature not later than January 1, 2051. The Chairman and Vice Chairman of the Authority, either of whom may act, are each authorized to approve the final terms of the 2019 Bonds as shall be acceptable to the University, subject to the foregoing parameters, which approval shall be conclusively evidenced by the execution and delivery of the Bond Purchase Agreement. The principal of, premium, if any, and interest on the 2019 Bonds shall be limited obligations of the Authority payable solely from the security described in the Indenture including, without limitations, assignment by the Authority of the Note to the Trustee.

The principal of, premium, if any, and interest on the 2019 Bonds shall not be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia (the "Commonwealth") or any political subdivision thereof, including the Authority and the City of Lexington, Virginia (the "City"). Neither the Commonwealth nor any political subdivision thereof, including the Authority and the City, shall be obligated to pay the principal of, premium, if any, or interest on the 2019 Bonds or other costs incident thereto except from the security therefor described in the Indenture, and neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision thereof, including the Authority and the City, will be pledged to the payment of the principal of, premium, if any, or interest on the 2019 Bonds or other costs incident thereto. No covenant, condition or agreement contained in the 2019 Bonds, the Bond Documents or any other financing instrument executed and delivered in connection therewith shall be deemed to be a covenant, condition or agreement of any past, present or future director, officer, employee or agent of the Authority in his or her individual capacity, and no officer of the Authority executing the 2019 Bonds shall be liable personally on the 2019 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**4. Approval, Execution and Delivery of Documents.** The Bond Documents to which the Authority is a party are hereby approved in substantially the forms submitted to this meeting, with such changes, insertions, completions or omissions (including, without limitation, changes of the dates thereof and other changes necessary to reflect the final terms of the 2019 Bonds within the parameters described in Paragraph 3 above) as may be approved by the Chairman



or the Vice Chairman of the Authority, whose approval shall be evidenced conclusively by the execution and delivery of the 2019 Bonds and such documents containing such changes, insertions, completions or omissions. The execution of the 2019 Bonds and their delivery against payment therefor, the amount of such payment to be disbursed in accordance with the terms of the Indenture, are authorized and directed. The execution and delivery of, and the performance by the Authority of its obligations under, the Bond Documents to which it is a party are authorized and directed. The Chairman and the Vice Chairman of the Authority are each authorized and directed to execute, on behalf of the Authority, the Indenture, the 2019 Bonds, the Loan Agreement and the Bond Purchase Agreement, and, if required or requested, the Secretary or any Assistant Secretary of the Authority is authorized and directed to affix the seal of the Authority to the Indenture, the 2019 Bonds, the Loan Agreement and the Bond Purchase Agreement and to attest such seal. The signatures of the Chairman or Vice Chairman and the Secretary or any Assistant Secretary and the seal of the Authority on the 2019 Bonds may be by facsimile. One or more additional underwriting firms may be added to the Bond Purchase Agreement.

**5. Preliminary Official Statement.** The Preliminary Official Statement in substantially the form presented to this meeting, with such completions, omissions, additions and changes as shall be approved by the University and the Underwriter, is approved and distribution thereof is authorized. Distribution of the Preliminary Official Statement shall constitute conclusive evidence that it has been deemed final by the Authority as of its date, except for the omission of such pricing and other information permitted to be omitted for purposes of federal Securities and Exchange Commission Rule 15c2-12 (“Rule 15c2-12”); provided that except for information contained therein regarding the Authority under the headings “THE AUTHORITY” and “LITIGATION” the Authority makes no representation or warranty as to the accuracy, adequacy or completeness of the Preliminary Official Statement

**6. Official Statement.** After the sale of the 2019 Bonds, the Preliminary Official Statement revised to reflect the terms of the 2019 Bonds in accordance with the Bond Purchase Agreement shall constitute the final Official Statement. The Chairman and Vice Chairman of the Authority are authorized to execute and deliver to the Underwriter the Official Statement. The Underwriter is authorized to distribute the Official Statement, and distribution of the Official Statement shall be conclusive evidence that it has been deemed final by the Authority as of its date, within the meaning of Rule 15c2-12; provided that except for information contained therein regarding the Authority under the headings “THE AUTHORITY” and “LITIGATION” the Authority makes no representation or warranty as to the accuracy, adequacy or completeness of the Official Statement.

**7. Other Documents.** Each officer of the Authority is authorized and directed to execute and deliver on behalf of the Authority such instruments, documents or certificates, including, without limitation, one or more escrow deposit agreements to effectuate the defeasance of the refunded Series 2013 Bonds and Series 2015A Bonds (together, the “Refunded Bonds”), on behalf of the Authority and to take all such further action as may be necessary or desirable in connection with the issuance and sale of the 2019 Bonds and the refunding of the Refunded Bonds, and to do and perform such things and acts, as they shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bond Documents or such other instruments, documents or certificates. All of the foregoing previously done or performed by such officers of the Authority are in all respects approved, ratified and confirmed.

**8. Bond Counsel.** At the request of the University, the Authority hereby approves Kaufman & Canoles, a Professional Corporation, Richmond, Virginia, as Bond Counsel to supervise the proceedings and approve the issuance of the 2019 Bonds.

**9. Payment of Costs and Indemnification of Authority.** All fees, costs and expenses in connection with the refinancing of the Refinanced Projects and the issuance of the 2019 Bonds, including the Authority's fees (as provided in the Loan Agreement) and the other fees and expenses of the Authority and its legal counsel, shall be paid from the proceeds of the 2019 Bonds or from funds provided by the University. The University hereby agrees to indemnify and save harmless the Authority, its officers, directors, employees and agents from and against all liabilities, obligations, claims, damages, penalties, losses, costs and expenses in any way connected with the Refinanced Projects, the application submitted by the University or the issuance of the 2019 Bonds.

**10. Other Actions.** All other actions heretofore or hereafter taken by the directors or officers of the Authority that are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the 2019 Bonds and the undertaking of the refinancing of the Refinanced Projects are hereby ratified, approved and confirmed. Any authorization herein to execute a document shall include authorization to record such document where appropriate and to deliver it to the other parties thereto.

**11. Effective Date.** This Resolution shall take effect immediately upon its adoption.

Adopted: November 20, 2019

**CERTIFICATE**

The undersigned Secretary of the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”), hereby certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Board of Directors of the Authority present and voting at a meeting duly called and held on November 20, 2019, in accordance with law, and that such resolution has not been repealed, revoked, rescinded or amended, and is in full force and effect on the date hereof.

**WITNESS** the following signature this \_\_\_ day of \_\_\_\_\_, 2019.

(SEAL)

\_\_\_\_\_  
Secretary, Industrial Development Authority of the  
City of Lexington, Virginia

PRELIMINARY OFFICIAL STATEMENT DATED December \_\_, 2019

NEW ISSUE  
BOOK ENTRY ONLY

RATINGS: Standard & Poor's: "[AA]"  
Moody's: "[Aa2]"  
(See "Ratings" herein)

In the opinion of Bond Counsel, under current law interest on the 2019 Bonds is includible in gross income for federal income tax purposes. Bond Counsel is further of the opinion that interest on the 2019 Bonds is exempt from income taxation by the Commonwealth of Virginia (the "Commonwealth"). See "TAX MATTERS" herein regarding certain other tax considerations.



INDUSTRIAL DEVELOPMENT AUTHORITY OF  
THE CITY OF LEXINGTON, VIRGINIA  
Educational Facilities Revenue Refunding Bonds  
(Washington and Lee University),  
Series 2019



Dated: Date of Delivery

Due: January 1, as shown on the inside cover

The above-referenced educational facilities revenue refunding bonds (the "2019 Bonds") will be limited obligations of the Industrial Development Authority of the City of Lexington, Virginia (the "Authority"), payable from and secured by an assignment of payments received by the Authority under an unsecured promissory note in the principal amount of \$ \_\_\_\_\_\* issued by

THE WASHINGTON AND LEE UNIVERSITY

- PURPOSE** ..... Proceeds of the 2019 Bonds will be loaned by the Authority to The Washington and Lee University (the "University") and used to (1) refund certain prior obligations issued for the benefit of the University; and (2) pay expenses incurred in connection with the issuance of the 2019 Bonds, all as described in the section "Plan of Refunding."
- DENOMINATION** ..... The 2019 Bonds will be issued as fully registered bonds in denominations of \$5,000 and integral multiples thereof.
- INTEREST PAYABLE** ..... Interest will be payable semiannually, beginning [January][July] 1, 20\_\_ and on each January 1 and July 1 thereafter by payment to The Depository Trust Company ("DTC"), which will in turn remit such payments to DTC participants for subsequent disbursement to the beneficial owners. Principal will be payable at the designated corporate trust office of U.S. Bank National Association, as Trustee.
- PREPAYMENT** ..... The 2019 Bonds are subject to optional redemption as described herein.
- LIMITED OBLIGATIONS** ..... The 2019 Bonds and the interest thereon will not constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any of its political subdivisions, including the Authority and City of Lexington, Virginia. Neither the Commonwealth of Virginia nor any of its political subdivisions, including the Authority and City of Lexington, Virginia, will be obligated to pay the principal of or interest on the 2019 Bonds or other costs incident thereto, except from the revenues, receipts and payments pledged for such purpose. Neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any of its political subdivisions, including the Authority and City of Lexington, Virginia, is pledged to the payment of the principal of and interest on the 2019 Bonds or other costs incident thereto. The Authority has no taxing power.
- DISCLAIMER** ..... This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire official statement to obtain information essential to the making of an informed investment decision.
- TERMS OF DELIVERY** ..... The 2019 Bonds are offered, when, as and if issued by the Authority and received by the Underwriter, subject to the approval of their validity by Kaufman & Canoles, a Professional Corporation, Richmond, Virginia, Bond Counsel, as described herein, and to certain other conditions. Certain legal matters will be passed upon for the Authority by [Mann Legal Group, PLLC, Lexington, Virginia]; for the University by its general counsel, Jennifer Kirkland, Esquire, Lexington, Virginia; and for the Underwriter by its counsel, McGuireWoods LLP, Richmond, Virginia. PFM Financial Advisors LLC, Arlington, Virginia, serves as financial advisor to the University in connection with the issuance and sale of the 2019 Bonds.
- DELIVERY DATE** ..... Delivery of the 2019 Bonds is expected to be on or about December \_\_, 2019, through the facilities of The Depository Trust Company, New York, New York.

WELLS FARGO SECURITIES

Dated: \_\_\_\_\_, 2019

\* Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. The 2019 Bonds may not be sold nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the 2019 Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

**MATURITY SCHEDULE**

\$ \_\_\_\_\_<sup>\*</sup>  
**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
 THE CITY OF LEXINGTON, VIRGINIA**  
**Educational Facilities Revenue Refunding Bonds**  
**(Washington and Lee University),**  
**Series 2019**

<u>Due</u> <u>January 1</u> <sup>*</sup>	<u>Principal</u> <u>Amount</u> <sup>*</sup>	<u>Interest</u> <u>Rate</u>	<u>Yield/</u> <u>Price</u>	<u>CUSIP</u> <sup>**</sup>	<u>Due</u> <u>January</u> <u>1</u> <sup>*</sup>	<u>Principal</u> <u>Amount</u> <sup>*</sup>	<u>Interest</u> <u>Rate</u>	<u>Yield/</u> <u>Price</u>	<u>CUSIP</u> <sup>**</sup>
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\$ \_\_\_\_\_ % Term Bonds due January 1, 20 \_\_, priced at \_\_\_% to yield \_\_\_%, CUSIP No. \_\_\_\*\*

\$ \_\_\_\_\_ % Term Bonds due January 1, 20 \_\_, priced at \_\_\_% to yield \_\_\_%, CUSIP No. \_\_\_\*\*

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\* Preliminary, subject to change.

\*\* CUSIP® is a registered trademark of the American Bankers Association. CUSIP Global Services is managed on behalf of the American Bankers Association by S&P Capital IQ. Copyright©2019 CUSIP Global Services. All rights reserved. CUSIP data herein is provided by S&P Capital IQ, a division of McGraw-Hill Financial, Inc. The CUSIP data herein is provided solely for the convenience of reference only, and neither the County, the Corporation nor the Underwriters make any representation to the correctness of the CUSIP numbers either as printed on the 2019 Bonds or as contained herein.

The 2019 Bonds will be exempt from registration under the Securities Act of 1933, as amended. As obligations of a political subdivision of the Commonwealth of Virginia, the 2019 Bonds will be exempt also from registration under the securities laws of Virginia.

This Official Statement is not to be construed as a contract with the purchasers of the 2019 Bonds. Statements contained in this Official Statement that involve estimates, projections, forecasts or matters of opinion, whether or not expressly so described, are intended solely as such and are not to be construed as a representation of facts.

No dealer, broker, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations should not be relied upon as having been authorized by the Authority, the University or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the 2019 Bonds by any person in any state in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from the Authority, the University and other sources that are deemed to be reliable, but is not guaranteed as to accuracy or completeness by the Underwriter. The information herein is subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create an implication that there has been no change in the affairs of the Authority or the University since the date hereof.

The Authority neither has nor assumes any responsibility as to the accuracy or completeness of the information in this Official Statement, all of which, other than the information in “The Authority” and that portion of the information in “Litigation” pertaining to the Authority, has been furnished by others. THE AUTHORITY MAKES NO REPRESENTATIONS HEREUNDER WHATSOEVER AS TO THE CREDITWORTHINESS OF THE UNIVERSITY OR THE ABILITY OF THE UNIVERSITY TO PAY THE PRINCIPAL OF AND INTEREST ON THE 2019 BONDS.

The Trustee has neither reviewed nor participated in the preparation of this Official Statement.

#### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT**

Certain statements contained in this Official Statement, including the Appendices hereto, reflect not historical facts but forecasts, projections and “forward-looking statements.” No assurance can be given that the future results discussed in certain sections of this Official Statement will be achieved and actual results may differ materially from the forecasts and projections contained herein. In this respect, words such as “plan,” “expect,” “estimate,” “project,” “anticipate,” “intend,” “believe,” “budget” or words of similar import are intended to identify forward-looking statements. All statements in this Official Statement, including forward-looking statements, speak only as of the date they are made, and the University and the Underwriter disclaim any obligation to update any of the forward-looking statements contained herein to reflect future events or developments. Additionally, all projections, forecasts, assumptions and other forward-looking statements are expressly qualified in their entirety by the cautionary statements set forth in this Official Statement. Such forward-looking statements include, among others, certain of the information under the caption “**FINANCIAL INFORMATION - Management’s Discussion of Financial Position and Operations**” in APPENDIX A to this Official Statement and “**BONDHOLDERS’ RISKS**” in the forepart of this Official Statement.

**The achievement of certain results or other expectations contained in or implied by such forward-looking statements involves known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The University does not plan to issue updates**

**or revisions to those forward-looking statements if or when its expectations change or events, conditions or circumstances on which such statements are based occur or fail to occur.**

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibility to investors under federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE PRICE OF THE 2019 BONDS, INCLUDING TRANSACTIONS TO (1) OVERALLOT IN ARRANGING THE SALE OF THE 2019 BONDS, AND (2) MAKE PURCHASES AND SALES OF THE 2019 BONDS FOR LONG OR SHORT ACCOUNT, ON A WHEN-ISSUED BASIS OR OTHERWISE AT SUCH PRICES, IN SUCH AMOUNTS AND IN SUCH MANNER AS THE UNDERWRITER MAY DETERMINE.

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- C - Definitions of Certain Terms and Summaries of Certain Provisions of the Financing Documents
- D - Form of Proposed Bond Counsel Opinion
- E - Form of Continuing Disclosure Agreement

F - Information Regarding The Depository Trust Company and Its Book-Entry System



## OFFICIAL STATEMENT

\$ \_\_\_\_\_ \*

### INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA

#### Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019

#### INTRODUCTION

This Official Statement, which includes the cover page and appendices, is provided to set forth certain information in connection with the issuance by the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”), a political subdivision of the Commonwealth of Virginia, of its Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019 (the “2019 Bonds”), in the aggregate principal amount of \$ \_\_\_\_\_.\* **THIS INTRODUCTION IS QUALIFIED IN ITS ENTIRETY BY INFORMATION FOUND ELSEWHERE IN THIS OFFICIAL STATEMENT. THIS OFFICIAL STATEMENT SPEAKS ONLY AS OF ITS DATE AND THE INFORMATION HEREIN IS SUBJECT TO CHANGE.**

The 2019 Bonds will be issued in accordance with the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”), pursuant to the terms of an Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), between the Authority and U.S. Bank National Association, Richmond, Virginia, as trustee (the “Trustee”). Proceeds of the 2019 Bonds will be loaned to The Washington and Lee University, Lexington, Virginia (the “University”), pursuant to the terms of a Loan Agreement, dated as of December 1, 2019 (the “Loan Agreement”), between the Authority and the University, to (1) refund certain prior obligations issued for the benefit of the University, and (2) pay expenses incurred in connection with the issuance of the 2019 Bonds. See the section herein “**Plan of Refunding.**”

The 2019 Bonds will be limited obligations of the Authority payable solely from the revenues and receipts received by the Authority under the Loan Agreement. To evidence its obligations under the terms of the Loan Agreement, and in consideration for the loan, the University will deliver its unsecured promissory note dated the date of delivery of the 2019 Bonds in the original principal amount of \$ \_\_\_\_\_\* (the “2019 Note”). The 2019 Bonds will be equally and ratably secured by the assignment to the Trustee of the 2019 Note.

A listing of certain defined terms used in this Official Statement and brief descriptions of certain provisions of the Indenture and the Loan Agreement are set forth in **Appendix C.**

#### THE AUTHORITY

The Authority was created on April 16, 1987, by an Ordinance adopted by the Council of the City of Lexington, Virginia (the “City Council”) to promote and further the purposes of the Act. The Authority is a political subdivision of the Commonwealth of Virginia governed by a board of directors appointed by the City Council. The Authority is empowered to issue its revenue bonds to finance or refinance, among other things, facilities for private, accredited and nonprofit institutions of collegiate education in the

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\* Preliminary, subject to change.

Commonwealth of Virginia, whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.

The Authority makes no representation or warranty whatsoever concerning the economic feasibility or the creditworthiness of the University, and no such representation or warranty shall be implied from the issuance of the 2019 Bonds or the other transactions described or contemplated herein. The Authority has not independently verified any information contained in this Official Statement other than the information under this caption and in the section “**Litigation**,” insofar as it pertains to the Authority.

The 2019 Bonds will be limited obligations of the Authority payable solely from certain amounts paid by the University under the Loan Agreement and other moneys pledged therefor under the Indenture as described in the section “**Security for the 2019 Bonds**.” The Authority has no taxing power.

No covenant, condition or agreement contained in the 2019 Bonds, the Indenture or the Loan Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority in his individual capacity, and neither the directors of the Authority nor any officer thereof executing the Indenture shall be liable personally on the 2019 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

## THE 2019 BONDS

**Description.** The 2019 Bonds will be dated their date of delivery and will mature on the dates and in the amounts as set forth on the cover page of this Official Statement. Each 2019 Bond shall bear interest (a) from its dated date, if it is authenticated prior to [January][July] 1, 20\_\_, and (b) otherwise from the January 1 or July 1 that is, or immediately precedes, the date on which such 2019 Bond is authenticated; provided that, if at the time of authentication of any 2019 Bond interest is in default, such 2019 Bond shall bear interest from the date to which interest has been paid. Interest on the 2019 Bonds shall be computed on the basis of a 360-day year of twelve 30-day months.

The 2019 Bonds initially will be issued as fully registered bonds, and shall be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York (“DTC”). Purchases of beneficial interests in the 2019 Bonds will be made in book-entry form in denominations of \$5,000. Purchasers will not receive certificates representing their beneficial ownership interest in the 2019 Bonds purchased. As long as DTC or its nominee, Cede & Co., is the registered owner of the 2019 Bonds, such payments will be made directly to Cede & Co. For information on DTC and its Book-Entry System, see **Appendix F**.

Principal and interest on the 2019 Bonds shall be payable in lawful money of the United States of America, but only from the revenues and other sources pledged to the payment thereof as provided in the Indenture. Principal of the 2019 Bonds shall be payable upon presentation and surrender of the 2019 Bonds as they become due at the corporate trust office of the Trustee; provided that, for so long as DTC is the sole holder of the 2019 Bonds, principal of the 2019 Bonds shall be payable as provided in DTC’s letter of representations with the Authority as described in **Appendix F**. Interest on Bonds shall be payable to the registered owners by check or draft mailed to such owners at their addresses as they appear on each December 15 and June 15 immediately preceding the interest payment date on registration books kept by the Trustee; provided, however, that if any 2019 Bonds are registered in the name of a securities depository or its nominee or at the option of any other registered owner of at least \$1,000,000 principal amount of any 2019 Bonds, payment will be made by wire transfer pursuant to the most recent wire instructions received by the Trustee from such registered owner.

If any principal of or interest on any 2019 Bond is not paid when due (whether at maturity, upon acceleration or call for redemption or otherwise), then the overdue installments of principal and, to the extent permitted by law, interest shall bear interest until paid at the same rate set forth in such 2019 Bond.

As long as the 2019 Bonds are held by DTC or its nominee, beneficial owners may transfer their interest in the 2019 Bonds through the facilities of DTC, as described in **Appendix F**. If the book-entry system is discontinued, exchanges of the 2019 Bonds may be made at the Trustee's designated corporate trust office for an equal aggregate principal of other Bonds of the same maturity, of authorized denominations and bearing interest at the same rate.

In the event that any 2019 Bond has been mutilated, lost, stolen or destroyed, the Authority may execute and the Trustee may authenticate and deliver a new 2019 Bond upon receipt of payment of the reasonable expenses and charges of the Authority and the Trustee and in the case of a lost, stolen or destroyed 2019 Bond, upon receipt by the Authority and the Trustee of (i) evidence satisfactory to them that such 2019 Bond was lost, stolen or destroyed and (ii) indemnity satisfactory to them.

**A more complete description of the Indenture, the Loan Agreement and the 2019 Note is provided in "DEFINITIONS OF CERTAIN TERMS AND SUMMARIES OF CERTAIN PROVISIONS OF THE FINANCING DOCUMENTS" in Appendix C.**

**Optional Redemption.\*** The 2019 Bonds that are stated to mature after January 1, 20\_\_\* are subject to redemption prior to maturity at the option of the Authority (as directed by the University), in whole or in part (in any integral multiple of \$5,000) at any time on or after January 1, 20\_\_,\* upon payment of 100% of the principal amount of the 2019 Bonds to be redeemed plus interest accrued to the date fixed for redemption.

**Extraordinary Optional Redemption.\*** The 2019 Bonds shall also be subject to redemption in whole or in part on any date, at the option of the Authority (as directed by the University), from the proceeds of casualty insurance or condemnation awards, at a redemption price equal to 100% of the principal amount of the 2019 Bonds to be redeemed, without premium, plus accrued interest to the redemption date, if all or any part of the University's facilities refinanced with the 2019 Bonds is damaged or destroyed or is taken through the exercise of the power of eminent domain and the Authority has delivered to the Trustee a certificate of the University to the effect that the University has determined not to use such proceeds to replace or rebuild the damaged, destroyed or taken property.

**Mandatory Sinking Fund Redemption.** The 2019 Bonds maturing on January 1, 20\_\_, are required to be redeemed prior to maturity in part in accordance with the sinking fund requirements of the Indenture on January 1 in years and amounts, at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date, as follows:

<u>Year</u>	<u>Amount</u>
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The Indenture provides for a credit against such redemption requirements for any 2019 Bonds that prior to any such redemption date have been purchased by the University and surrendered for cancellation and that previously have not been applied as a credit against any redemption requirement.

**Selection of Bonds for Redemption.** If less than all of the 2019 Bonds are called for redemption, the maturities of the 2019 Bonds to be redeemed shall be selected by the Authority, at the direction of the

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\* Preliminary, subject to change.

University. Subject to the applicable provisions of DTC, if less than all of the 2019 Bonds of any maturity are called for redemption, the 2019 Bonds to be redeemed will be selected by lot in such manner as the Trustee in its discretion may determine, each portion of \$5,000 principal amount being counted as one 2019 Bond for such purpose.

**Notice of Redemption.** If any of the 2019 Bonds or portions thereof are called for redemption, the Trustee shall cause a notice of the call for redemption identifying the 2019 Bonds to be redeemed to be sent by first class, registered or certified mail not less than 30 nor more than 60 days prior to the redemption date, to the registered owner of each 2019 Bond to be redeemed at his address as it appears on the registration books kept by the Trustee. Such notice may be conditioned upon the occurrence of future events, including the availability of funds to affect the redemption on the redemption date.

Failure of the Trustee to give any such notice or any defect in a redemption notice shall not affect the redemption or the validity of the proceedings for the redemption of any of the 2019 Bonds with respect to which no such failure has occurred. Any notice mailed as provided in the Indenture shall be conclusively presumed to have been given whether or not actually received by any Bondholder (which in the case of the 2019 Bonds held in book-entry form shall be the applicable securities depository or its nominee).

So long as Cede & Co., as nominee of DTC, is the registered owner of the 2019 Bonds, all notices of redemption will be sent only to Cede & Co. and delivery of notice of redemption to the DTC Participants, if any, is solely the responsibility of DTC (see **Appendix F**). Interest will cease to accrue on 2019 Bonds called for redemption from and after the redemption date if sufficient money shall be held by the Trustee to pay the principal of and accrued interest on the 2019 Bonds to be redeemed to the redemption date.

If 2019 Bonds have been duly called for redemption and notice of the redemption thereof has been duly given or provided for and if monies or certain investments for the payment of the 2019 Bonds (or the principal amount thereof to be redeemed) and the interest thereon to the date fixed for redemption are held by the Trustee, then 2019 Bonds (or the principal amount of the 2019 Bonds called for redemption) will on the redemption date become due and payable, the registered owner thereof shall thereafter have no rights under the Indenture as the registered owner of such Bonds (or the principal amount thereof to be redeemed) except to receive the principal amount thereof and interest thereon to the redemption date.

## SECURITY FOR 2019 BONDS

The 2019 Bonds are limited obligations of the Authority payable solely from the revenues and receipts received by the Authority under the Loan Agreement. The amounts payable under the 2019 Note are designed to be sufficient to pay when due the principal of and interest on the 2019 Bonds.

The 2019 Bonds are not secured by a mortgage or deed of trust on, or a security interest in, any property of the Authority or the University. No debt service reserve fund has been established for the 2019 Bonds. The only sources of payment for the 2019 Bonds are the payments made by the University under the Loan Agreement, including payments under the 2019 Note, which are unsecured. See the section herein “**Bondholders’ Risks**”. Payment of the 2019 Note, and therefore the 2019 Bonds, is dependent upon tuition revenue, fund raising and earnings on the University’s endowment and similar funds. Moreover, the University is not prohibited from (a) mortgaging or pledging any of its property, revenue producing or otherwise, to other creditors, and (b) incurring additional debt, secured or unsecured, on a parity with (or series to) the 2019 Note or otherwise. The incurrence by the University of additional debt, secured or unsecured, in the future may have an adverse effect on (i) the ability of the University to make payments required under the 2019 Note, and (ii) the market price of the 2019 Bonds. For a discussion of the University’s existing indebtedness, see the section “**Outstanding Long-Term Indebtedness**” in **Appendix A**.

**THE 2019 BONDS AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA, OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND CITY OF LEXINGTON, VIRGINIA. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND CITY OF LEXINGTON, VIRGINIA, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THE 2019 BONDS OR OTHER COSTS INCIDENT THERETO, EXCEPT FROM THE REVENUES AND RECEIPTS PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND CITY OF LEXINGTON, VIRGINIA, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THE 2019 BONDS, OR INTEREST THEREON OR OTHER COSTS INCIDENT THERETO. THE AUTHORITY HAS NO TAXING POWER.**

#### **DEBT SERVICE SCHEDULE**

The following table sets forth for each 12-month period ending on June 30 the amounts payable by the University for the payment of principal of and interest on its long-term indebtedness after giving effect to the issuance of the 2019 Bonds. Such amounts reflect the University's payment during the applicable fiscal year of amounts that are paid on July 1 of the succeeding fiscal year. For a discussion of the University's existing indebtedness, see the section **"Outstanding Long-Term Indebtedness"** in **Appendix A**.

<u>Fiscal</u> <u>Year</u>	<u>Existing</u> <u>Debt</u> <u>Service</u> <sup>(1)</sup>	<u>Principal</u>	<u>2019 Bonds*</u> <u>Interest</u>	<u>Total</u>	<u>Total Debt</u> <u>Service*</u>
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Total<sup>(2)</sup>

\* Preliminary, subject to change.

<sup>(1)</sup> Existing Debt Service column excludes the Refunded Bonds, as defined below, as the Refunded Bonds are included in the 2019 Bonds Debt Service column. [Add assumptions with respect to interest rate on 2018B Bond.]

<sup>(2)</sup> Totals may not foot due to rounding.

The University's total outstanding debt service obligations (including its loan repayments related to the 2019 Bonds, as shown above) are described more fully in the section **“Outstanding Long-Term Indebtedness”** in **Appendix A**.

## THE UNIVERSITY

The University is an organization exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). Attached as **Appendix A** to this Official Statement is a more complete description of the University and its operations. Attached as **Appendix B** are financial statements with respect to the University’s operations that, to the extent and for the periods indicated, have been examined by KPMG, LLP, independent certified public accountants.

## BONDHOLDERS’ RISKS

*The ability of the Authority to make timely payments of principal and interest on the 2019 Bonds depends solely on the ability of the University to make timely payments of principal of and interest on the 2019 Note. The University has agreed under the Loan Agreement to make all payments required under the 2019 Note as they become due. The University expects that revenues derived from its ongoing operation, when taken together with other funds available for such purposes, will be adequate to make such debt service payments. A number of factors, however, including those set forth below, may adversely affect the University’s ability to make timely debt service payments. For more information on the University, see Appendices A and B hereto.*

**Revenue from Student Fees; Competition.** The University receives a significant percentage of its annual revenues from tuition, fees and other charges to students. While the University has consistently demonstrated a high level of student demand for its programs at current fee levels, there is no assurance it will be able to do so in the future. Fees at the University are higher than those at state-supported colleges and many other private schools. Demand for attendance may be subject to a number of factors beyond the control of the University, such as general economic and demographic conditions and public and private funding of financial aid.

As described more fully in the section “**Competing Universities**” in **Appendix A**, the University faces competition for students with high academic achievements. This competition is likely to continue as students choose whether to attend the University, another private or public college or university. Factors that influence a student’s selection of a college or university include, among other things, academic reputation, faculty, degree programs, course and major selection, the relative cost of attendance, the availability of financial aid and prospects for employment upon graduation.

**Market Value of Investments.** Like other endowed organizations, the University may incur investment gains or losses in any given year. While the University believes that its investments are being managed prudently and has adopted policies designed to ensure the prudent management of these investments in the future, there can be no assurance that unforeseen developments in the securities markets will not have an adverse effect on the market value of these investments and the income generated therefrom, thereby decreasing the amount of funds available to pay debt service on the 2019 Note. See the section “**Investment Policy, Portfolio and Manager**” in **Appendix A**.

**Financial Assistance.** As described in the section “**Student Financial Aid**” in **Appendix A**, the University has historically provided substantial financial assistance in the form of scholarships, grants and loans. Financial assistance is a significant factor in the decision of many students to attend a particular college or university. The University’s ability to maintain current and projected required levels of financial assistance is directly affected by both fundraising and federal financial aid programs. Reductions in these sources of funds could reduce the number of qualified applicants and the number of students actually enrolling.

**Fundraising.** The University has historically demonstrated an ability to raise funds from a variety of benefactors for its operations, capital development programs and endowment. The ability to raise funds in the future may be affected adversely by a number of factors, including changes in general economic conditions and tax law changes affecting the deductibility of charitable contributions. See “Fund-Raising” in Appendix A.

**Unsecured Obligations.** Payment of the 2019 Note, and therefore the 2019 Bonds, is not secured by any mortgage or pledge of any of the University’s assets and is thus dependent upon tuition revenues, fundraising and earnings on the University’s endowment and similar funds.

**Additional Debt.** Neither the Indenture nor the Loan Agreement restricts the University from issuing any additional indebtedness, including indebtedness received by a lien on University revenues. The University has previously incurred unsecured indebtedness as described more fully in the section “Outstanding Long-Term Indebtedness” in Appendix A. The incurrence of additional indebtedness, whether secured or unsecured, in the future may have an adverse effect on (i) the University’s ability to make debt service payments on the 2019 Note, and (ii) the market price of the 2019 Bonds. Holders of the 2019 Bonds may be required to share with holders of existing indebtedness and any future additional indebtedness any moneys realized from the execution of remedies or bankruptcy proceedings and in the proceeds of certain insurance and condemnation awards.

**Future Capital Expenditures.** The University may finance future capital expenditures with tax-exempt and/or taxable borrowings, and neither the Indenture nor the Loan Agreement restricts the University from issuing additional indebtedness. Although such expenditures are largely discretionary, the failure to continue such capital expenditures could result in a loss of competitive position.

**Tax Exempt Status.** The University has received letters from the Internal Revenue Service (the “IRS”) confirming its status as a tax exempt organization described in Section 501(c)(3) of the Code. To maintain such status, the University is required to conduct its operations in a manner consistent with representations previously made to the IRS and with current and future IRS regulations and rulings governing tax exempt organizations. In recent years the IRS and members of Congress have expressed concern about the need for more restrictive rules governing the tax exempt status of 501(c)(3) organizations generally, but no specific legislation is now pending which would have a substantial adverse effect on the University’s tax exempt status. The Congress and the IRS have also focused more closely on the scope of activities constituting unrelated business income; however, the effect on the University should not be material because the University believes its activities giving rise to such income are not substantial. Compliance with current and future regulations and rulings of the IRS could adversely affect the ability of the University to charge and collect revenues, finance or refinance indebtedness on a tax exempt basis or otherwise generate revenues necessary to provide for payment of the 2019 Note. Although the University has covenanted to maintain its status as a tax exempt organization, loss of tax exempt status, should that occur, would likely have a significant adverse effect on the University and its operations.

**Secondary Market.** There is no guarantee that a secondary trading market will develop for the 2019 Bonds. Consequently, prospective purchasers of the 2019 Bonds should be prepared to hold their 2019 Bonds to maturity or prior redemption. Subject to applicable securities laws and prevailing market conditions, the Underwriter intends, but is not obligated, to make a market in the 2019 Bonds.

**Bankruptcy.** Any attempt by the Trustee to enforce payment of the 2019 Note or other rights provided in the Loan Agreement may be limited by bankruptcy proceedings and usual equity principles, which may restrict the Trustee’s ability to seek payment from property of the University. Because the 2019 Bonds are not secured by any lien or security interest, the Trustee would be an unsecured creditor with no special claim in a bankruptcy proceeding to revenues or particular assets of the University.



Bankruptcy proceedings by the University could have adverse effects on holders of the 2019 Bonds, including (a) delay in the enforcement of their remedies, (b) subordination of their claims to claims of those supplying goods and services to the University after the initiation of bankruptcy proceedings and to the administrative expenses of bankruptcy proceedings, and (c) imposition without their consent of a plan of reorganization reducing or delaying payment of the 2019 Bonds. The United States Bankruptcy Code contains provisions intended to ensure that, in any plan of reorganization not accepted by at least a majority of any class of creditors such as the holders of the 2019 Bonds, such class of creditors will have the benefit of their original claim or the “indubitable equivalent” thereof; however, such plan may not provide for payment in full of the 2019 Bonds. The effect of these and other provisions of the United States Bankruptcy Code cannot be predicted, and may be affected significantly by judicial interpretation.

**Other Factors.** Various other factors could affect the future financial strength of the University, such as fluctuations in interest rates, especially with respect to the University’s variable rate indebtedness, and changes in tax laws affecting the University’s cost of capital. A significant portion of the University’s budget relates to fixed expenses, including salaries of tenured faculty, which cannot be easily reduced or eliminated to respond to changing economic conditions.

**Risks Specific to Bank Debt.** The University has incurred debt, and may incur additional debt in the future, through private placements with one or more financial institutions (each “Bank Debt”). The terms of each Bank Debt will likely be negotiated separately and could create certain risks that could negatively affect the University’s ability to make the payments on the 2019 Bonds. The risks associated with Bank Debt include, but are not limited to, the following:

- (a) being variable rate (which would subject the University to interest rate risk, if interest rates were to increase),
- (b) having a balloon payment at maturity or call date (which would subject the University to either a large payment of cash at maturity or require the University to obtain alternate financing, and there could be no guarantee that the University could accomplish either) and
- (c) having financial covenants that are more restrictive than those in the Indenture, the Loan Agreement or the 2019 Note (which could result in a situation where the University is in default of its obligations under Bank Debt but not the 2019 Bonds), including but not limited to the right to accelerate if a cross default occurs with respect to other indebtedness of the University.

[Add specific details regarding structure of 2018B Bond.]

**Faculty.** The ability of the University to attract and retain quality faculty members is an important factor in the University’s academic reputation and its ability to attract students. Approximately 65% of the University’s faculty members are tenured. Should any reduction of programs be necessitated by economic conditions, the University’s ability to reduce the size of its faculty may be limited.

**Construction Risks.** The University is currently undertaking several construction projects. Although the University believes it has adequately estimated the costs of these projects, construction costs which exceed current estimates must be paid from the University’s equity reserves, its operating revenues or additional borrowing. Higher than expected construction costs could have adverse effects on the University’s financial condition. The uncertainties inherent in construction may result in escalations of the cost of its projects or delays in its completion which are not covered by any liquidated damages provisions and which may have an adverse effect on the University’s financial condition. The University must obtain several governmental approvals prior to commencement of its projects as construction progresses. Although the University believes that the projects will receive such approvals, there can be no assurance

that such approvals will be obtained in a timely fashion or that changes in the scope of the projects will not be required.

**Environmental Risks.** The federal Comprehensive Environmental Response, Compensation and Liability Act (the “Federal Superfund Act”) provides authority to the United States Environmental Protection Agency (the “EPA”) to arrange for response actions in the event of a release or substantial threat of release of hazardous substances and also imposes liability for certain response costs and damages on the present owner (among other parties) of a site of such release or threat of release. The Federal Superfund Act provides that all costs and damages for which a person is liable to the United States will constitute a lien upon all real property belonging to such person which is subject to or affected by the response action. The federal lien is subject to the normal rules of priority.

The University has no reason to believe that any portion of its campus has environmental problems of a material nature. However, no environmental survey has been performed recently so there can be no assurances the campus is free of environmental concerns.

The University is not aware of any enforcement actions in process with respect to any releases of pollutants or contaminants at its facilities. However, there can be no assurance that an enforcement action or actions will not be instituted under such statutes at a future date. In the event such enforcement actions were initiated, the University could be liable for the costs of removing or otherwise treating pollutants or contaminants located at its facilities.

**Laws and Regulations.** The University is currently subject to a wide variety of federal, state and local environmental, health and safety and organizational laws and regulations. Additional legislation and regulations affecting the University and municipal securities generally is frequently considered by the United States Congress, the Virginia General Assembly and various regulatory bodies. Educational institutions are susceptible to the practical, financial and legal risks associated with compliance with such laws and regulations. As of the date of this Official Statement, the University is not aware of any pending or threatened claim, investigation or enforcement action which, if determined adversely to the University, would have material adverse consequences to the operations or financial conditions of the University. There can be no assurance given, however, that the University will not encounter environmental, health or safety-related risks or other compliance risks in the future, and such risks may result in material adverse consequences to the operation or financial condition of the University.

**Cybersecurity.** Like many organizations, the University is highly dependent on digital technologies. These systems necessarily hold large quantities of highly sensitive protected information that is highly valued on the black market for such information. As a result, the electronic systems and networks of organizations like the University are considered likely targets for cyber attacks and other potential breaches of their systems. In addition to regulatory fines and penalties, the educational entities subject to the breaches may be liable for the costs of remediating the breaches, damages to individuals whose information has been breached, reputational damage and business loss, and damage to the information technology infrastructure. The University has taken, and continues to take, measures to protect its information technology system against such cyber attacks, but there can be no assurance that the University will not experience a significant breach. If such a breach occurs, the financial consequences of such a breach could have a materially adverse impact on the University.

## PLAN OF REFUNDING

Proceeds of the 2019 Bonds will be loaned to the University which expects to apply such proceeds, together with other available funds of the University, to (1) refund certain outstanding obligations issued

for the benefit of the University, and (2) pay expenses incurred in connection with the issuance of the 2019 Bonds. The University intends to apply a portion of the proceeds of the 2019 Bonds to the refunding of the following:

(a) all or a portion of the Authority’s \$34,960,000 Educational Facilities Revenue Bonds (Washington and Lee University), Series 2013 (the “2013 Bonds”), issued to (i) finance various capital improvements at the University, including (A) the renovation of existing buildings providing student housing and related landscape improvements (Gaines Hall, Graham-Lee Dorms and the adjoining courtyard); and (B) various projects pursuant to the University’s Annual Capital Plan; and (ii) pay costs of issuance of the 2013 Bonds.

and

(b) all or a portion of the \$32,040,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2015A (the “2015A Bonds”), issued by the Virginia College Building Authority (“VCBA”) to (i) refund a portion of VCBA’s Educational Facilities Revenue Bonds (Washington and Lee University), Series 2006 (the “Series 2006 Bonds”) originally issued to (X) finance various capital improvements at the University, (Y) refund the outstanding amount of VCBA’s Educational Facilities Revenue Bonds (The Washington and Lee University Project), Series 1994, and (Z) pay costs of issuing the Series 2006 Bonds, (ii) finance a portion of the costs of various capital, including (A) construction and equipping of seventeen apartment and townhouse-style buildings for student housing for approximately 336 students, (B) construction of a new pedestrian bridge crossing Woods Creek connecting pedestrian pathways between Leyburn Library and the Law School, (C) renovations and improvements to the University’s athletic fields, (D) renovation, construction and equipping of certain existing indoor athletic facilities, and (E) remodeling, renovation and equipping of various capital improvements in buildings throughout Campus, such improvements including, but not limited to, updating mechanical systems, health and safety systems, and ventilation systems, updating and modernizing existing student housing, and updating building layouts; and (iii) pay costs of issuance of the 2015A Bonds.

The table below sets forth the 2013 Bonds anticipated to be refunded:

**Industrial Development Authority of the City of Lexington, Virginia  
Educational Facilities Revenue Bonds (Washington & Lee), Series 2013**

<b>Year of Maturity (January 1)*</b>	<b>Refunded Principal Amount*</b>	<b><u>Interest Rate</u></b>	<b><u>CUSIP</u>‡</b>	<b>Redemption Date</b>
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\* Preliminary, subject to change.

‡ See the last paragraph on page (i) regarding the use of CUSIP numbers in this Official Statement.

The table below sets forth the 2015A Bonds anticipated to be refunded

**Virginia College Building Authority  
Educational Facilities Revenue Bonds (Washington & Lee University ), Series 2015A**

<b>Year of Maturity (January 1)*</b>	<b>Refunded Principal Amount*</b>	<b>Interest Rate</b>	<b>CUSIP‡</b>	<b>Redemption Date</b>
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The 2013 Bonds and 2015A Bonds anticipated to be refunded (the “Refunded Bonds”) are subject to change based on market conditions on the sale date.

Upon delivery of the 2019 Bonds, a portion of the net proceeds thereof[, together with other available funds,] will be deposited in one or more escrow funds (collectively, the “Escrow Fund”) with [U.S. Bank National Association], as escrow agent (in such capacity, the “Escrow Agent”), under one or more Escrow Agreements among the Authority, the University and the Escrow Agent, to redeem the Refunded Bonds. The Escrow Agent will hold the moneys deposited in the Escrow Fund in cash or invested, at the direction of the University, in direct obligations of the United States of America maturing in amounts and bearing interest at rates sufficient, without reinvestment, (1) to pay when due the interest on the applicable Refunded Bonds through the first day on which they may be redeemed and (2) to pay the principal of and accrued interest on the applicable Refunded Bonds to their stated redemption dates. The Escrow Fund, including interest earnings on the securities deposited therein, is pledged solely for the benefit of the holders of the Refunded Bonds. See “ESTIMATED SOURCES AND USES OF FUNDS” and “VERIFICATION OF MATHEMATICAL COMPUTATIONS.”

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\* Preliminary, subject to change.

‡ See the last paragraph on page (i) regarding the use of CUSIP numbers in this Official Statement.

## ESTIMATED SOURCES AND USES OF FUNDS

The sources and uses of funds related to the 2019 Bonds are estimated to be substantially as follows:

<u>Sources of Funds</u>	<u>2019 Bonds</u>	<u>Total</u>
Principal Amount	\$	\$
Plus [Net] Original Issue Premium/Discount		
Debt Service Fund		
Total Sources	<u>\$</u>	<u>\$</u>
 <u>Uses of Funds</u>		
Deposit to Escrow Fund	\$	\$
Issuance Expenses*		
Total Uses	<u>\$</u>	<u>\$</u>

\* Includes Underwriter's discount, legal fees, financial advisor fees, etc.  
See "Underwriting."

## UNDERWRITING

Wells Fargo Bank, National Association (the "Underwriter"), has entered into a Bond Purchase Agreement with the Authority to purchase the 2019 Bonds at a price of \$\_\_\_\_\_, representing the par amount, plus [net] original issue premium/discount of \$\_\_\_\_\_ and less an underwriting discount of \$\_\_\_\_\_. The obligation of the Underwriter to pay for the 2019 Bonds is subject to certain terms and conditions set forth in the Bond Purchase Agreement, including the delivery of specified opinions of counsel and of a certificate of the University that there has been no material adverse change in its condition (financial or otherwise) from that set forth in this Official Statement.

The Underwriter may offer and sell the 2019 Bonds to certain dealers (including dealer banks and dealers depositing the 2019 Bonds into investment trusts) and others at prices different from the public offering prices stated on the cover page of this Official Statement. Such initial public offering prices may be changed from time to time by the Underwriter.

The Underwriter and its respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage services. The Underwriter and its respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for the University, for which they received or will receive customary fees and expenses.

In the ordinary course of its various business activities, the Underwriter and its respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities, which may include credit default swaps) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of the University.

The Underwriter and its respective affiliates may also communicate independent investment

recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

[Wells Fargo Securities is the trade name for certain securities-related capital markets and investment banking service of Wells Fargo & Company and its subsidiaries, including, Wells Fargo Bank, National Association, which conducts its municipal securities sales, trading and underwriting operations through the Wells Fargo Bank, NA Municipal Products Group, a separately identifiable department of Wells Fargo Bank, National Association, registered with the Securities and Exchange Commission as a municipal securities dealer pursuant to Section 15B(a) of the Securities Exchange Act of 1934.

Wells Fargo Bank, National Association, acting through its Municipal Products Group (“WFBNA”), the sole underwriter for the 2019 Bonds, has entered into an agreement (the “WFA Distribution Agreement”) with its affiliate, Wells Fargo Clearing Services, LLC (which uses the trade name “Wells Fargo Advisors” (“WFA”), for the distribution of certain municipal securities offerings, including the 2019 Bonds. Pursuant to the WFA Distribution Agreement, WFBNA will share a portion of its underwriting compensation or remarketing compensation, as applicable, with respect to the 2019 Bonds with WFA. WFBNA has also entered into an agreement (the “WFSLLC Distribution Agreement”) with its affiliate Wells Fargo Securities, LLC (“WFSLLC”), for the distribution of municipal securities offerings, including the 2019 Bonds. Pursuant to the WFSLLC Distribution Agreement, WFBNA pays a portion of WFSLLC’s expenses based on its municipal securities transactions. WFBNA, WFSLLC and WFA are each wholly-owned subsidiaries of Wells Fargo & Company.]

#### **FINANCIAL ADVISOR**

PFM Financial Advisors LLC, Arlington, Virginia, serves as financial advisor to the University in connection with the issuance and sale of the 2019 Bonds. The Financial Advisor is not obligated to undertake, and has not undertaken, to make an independent verification or to assume responsibility for the accuracy, completeness or fairness of the information contained in this Official Statement. PFM Financial Advisors LLC is an independent advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

#### **RATINGS**

As shown on the cover page of this Official Statement, the 2019 Bonds have been rated “[AA]” by Standard & Poor’s Ratings Services (“Standard & Poor’s”) and “[Aa2]” by Moody’s Investors Service, Inc. (“Moody’s”). The University requested that the 2019 Bonds be rated and furnished certain information to Standard & Poor’s and Moody’s, including certain information that may not be included in this Official Statement.

Further explanation of the significance of such ratings may be obtained from Standard & Poor’s and Moody’s. Such ratings are not a recommendation to buy, sell or hold the 2019 Bonds. There is no assurance that such ratings will not be withdrawn or revised downward by Standard & Poor’s or Moody’s. Such action, if taken, could have an adverse effect on the market price of the 2019 Bonds.

Neither the Authority nor the Underwriter has undertaken any responsibility after issuance of the 2019 Bonds to assume maintenance of the ratings, to bring to the attention of owners of the 2019 Bonds any proposed revision to or withdrawal of such ratings, or to oppose any such revision or withdrawal.

## **BONDS ELIGIBLE FOR INVESTMENT AND SECURITY FOR PUBLIC DEPOSITS**

The Act provides that bonds issued pursuant thereto are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the Commonwealth of Virginia or its political subdivisions. The Act also provides that bonds issued pursuant thereto are eligible to secure the deposit of any public funds of the Commonwealth of Virginia or any of its localities, university districts or other political corporations or subdivisions. No representation is made as to the eligibility of the 2019 Bonds for investment or any other purpose under any law of any other state.

### **LEGAL MATTERS**

Certain legal matters relating to the authorization, issuance and sale of the 2019 Bonds are subject to the approving opinion of Kaufman & Canoles, a Professional Corporation, Richmond, Virginia, Bond Counsel. This opinion (the “Bond Opinion”) will be furnished at the expense of the University upon delivery of the 2019 Bonds, in substantially the form set forth in **Appendix D**. The Bond Opinion will be limited to matters relating to the authorization and validity of the 2019 Bonds and to the exemption of interest on the 2019 Bonds from taxation under current Virginia income tax laws. The Bond Opinion makes no statement as to the ability of the Authority or the University to provide for payment of the 2019 Bonds or as to the accuracy or completeness of this Official Statement or any other information that may have been relied on by anyone in making the decision to purchase the 2019 Bonds.

Certain legal matters will be passed on for the Authority by [Mann Legal Group, PLLC], Lexington, Virginia; for the University by its general counsel, Jennifer Kirkland, Esquire, Lexington, Virginia; and for the Underwriter by McGuireWoods LLP, Richmond, Virginia.

### **TAX MATTERS**

#### **[Tax Consequences Generally**

The following is a discussion of material United States federal income tax matters regarding of the purchase, ownership and disposition of the 2019 Bonds. This summary is based on the Internal Revenue Code of 1986, as amended (the “Code”), and existing and proposed Treasury Regulations, revenue rulings, administrative interpretations and judicial decisions, all as currently in effect and all of which are subject to change, possibly with retroactive effect, and subject to different interpretations. Except as specifically set forth in this subsection, this summary deals only with 2019 Bonds purchased by a United States holder, as defined below, at original issuance, at par, and held as capital assets within the meaning of Section 1221 of the Code. It does not discuss all of the tax consequences that may be relevant to such a holder in light of his particular circumstances or to holders subject to special rules, such as insurance companies, financial institutions, regulated investment companies or real estate investment trusts, dealers or brokers in securities or foreign currencies, traders in securities that elect the mark-to-market accounting method, persons holding the 2019 Bonds as part of a hedging transaction, “straddle,” conversion transaction, or other integrated transaction, or United States holders whose functional currency, as defined in Section 985 of the Code, is not the United States dollar. This discussion does not address United States estate tax consequences of holding the 2019 Bonds and, except as specifically described, does not address either tax consequences to pension plans or foreign investors or any aspect of state or local taxation with respect to the 2019 Bonds. Persons considering the purchase of the 2019 Bonds should consult with their own tax advisors concerning the application of the United States federal income tax laws to their particular situations as well as any tax consequences arising under the laws of any state, local or foreign jurisdiction. The opinion of Bond Counsel with respect to the 2019 Bonds will not address such matters.

If a partnership or other entity classified as a partnership for United States federal income tax purposes holds 2019 Bonds, the tax treatment of the partnership and each partner generally will depend on the activities of the partnership and the status of the partner. Partnerships acquiring 2019 Bonds, and partners in such partnerships, should consult their tax advisors.

### **United States Holders**

As used in the sections below, the term “United States holder” means a beneficial owner of a 2019 Bond that is for United States federal income tax purposes (a) an individual citizen or resident of the United States, (b) a corporation (including an entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (c) an estate, the income of which is includible in gross income for United States federal income tax purposes, regardless of its source, or (d) a trust if (i) a court within the United States can exercise primary supervision over the administration of such trust and one or more United States persons have the authority to control all substantial decisions of such trust or (ii) the trust has in effect a valid election to be treated as a domestic trust for United States federal income tax purposes. Further, as described below, a non-United States holder is any holder of a 2019 Bond that is not a United States holder.

The recently passed Tax Cuts and Jobs Act made many significant changes to the U.S. federal income tax laws. Pursuant to this legislation, as of January 1, 2018, (1) the federal income tax rate applicable to corporations is reduced to 21%, (2) the highest marginal individual income tax rate is reduced to 37%, and (3) the corporate alternative minimum tax is repealed. In addition, individuals, estates and trusts may deduct up to 20% of certain pass-through income, subject to complex limitations. We urge you to consult your tax advisors regarding the impact of this legislation on the purchase, ownership and sale of the 2019 Bonds.

THE DISCUSSION OF THE MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE 2019 BONDS IS NOT INTENDED TO BE, NOR SHOULD IT BE CONSTRUED TO BE, LEGAL OR TAX ADVICE TO ANY PARTICULAR PERSON. ACCORDINGLY, ALL PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE U.S. FEDERAL, STATE AND LOCAL AND NON U.S. TAX CONSEQUENCES RELATING TO THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE 2019 BONDS BASED ON THEIR PARTICULAR CIRCUMSTANCES.

### **Taxation of Interest**

Payments of interest on the 2019 Bonds generally will be taxable to a United States Holder as ordinary interest income at the time such payments are accrued or are received (in accordance with the United States Holder’s regular method of tax accounting), provided such interest is “qualified stated interest” within the meaning of Section 1272 of the Code. For purposes of this discussion, the term “qualified stated interest” on a 2019 Bond means all interest thereon based on a fixed rate, and payable unconditionally at a fixed period interval of one year or less during the entire term of the instrument.

Original Issue Discount. To the extent that the issue price of any bond of a maturity of the 2019 Bonds is less than the aggregate of the amounts (other than “qualified stated interest”) to be paid over the term of that bond by more than a de minimis amount, the different may constitute original issue discount (“OID”) on that bond. United States Holders of 2019 Bonds will be required to include OID in income for U.S. federal income tax purposes as it accrues, in accordance with a constant yield method based on a compounding interest (which may be before the receipt of cash payments attributable to such income). Under this method, United States Holders generally will be required to include in income increasingly greater amounts of OID in successive accrual periods.



**Amortizable Bond Premium.** A holder of a 2019 Bonds that purchased that bond for an amount that was greater than its stated redemption price at maturity will be considered to have purchased the 2019 Bond with “amortizable bond premium” equal in amount to such excess. For purposes of this discussion, the “stated redemption price at maturity” of a 2019 Bond, as of any date, is an amount equal to the aggregate of the amounts (other than “qualified stated interest”) to be paid on that bond over the remaining term. A United States Holder of a 2019 Bond purchased with amortizable bond premium may elect to amortize such premium using a constant yield method over the remaining term of the 2019 Bond and may offset interest otherwise required to be included in respect of the 2019 Bond during any taxable year by the amortized amount of such excess for the taxable year. Bond premium on a 2019 Bond held by a United States Holder that does not make such an election will decrease the amount of gain or increase the amount of loss otherwise recognized on the sale, exchange, redemption or retirement of a 2019 Bond. However, if the 2019 Bond may be optionally redeemed after the beneficial owner acquires it at a price in excess of its stated redemption price at maturity, special rules would apply under the Treasury Regulations that could result in a deferral of the amortization of some bond premium until later in the term of the 2019 Bond. Any election by a United States Holder to amortize bond premium applies to all taxable debt instruments beneficially owned by that person on or after the first day of the first taxable year to which such election applies and may be revoked only with the consent of the IRS. That a 2019 Bond was purchased by the holder with amortizable bond premium may affect the computation of includable original issue discount for that holder.

**Sale, Exchange or Retirement of the 2019 Bonds.** Upon the sale, retirement or other taxable disposition of a 2019 Bond, a United States holder generally will recognize taxable gain or loss equal to the difference between the amount realized on the sale, retirement or other taxable disposition (other than amounts representing accrued and unpaid interest, which will be taxable as ordinary interest income to the extent not previously included in gross income) and the United States holder’s adjusted tax basis in the 2019 Bond. In general, a United States holder’s adjusted tax basis in a 2019 Bond will equal the cost of the 2019 Bond to that holder, increased by the amount of any earned, but as yet unpaid, interest previously included in income by such holder with respect to such 2019 Bond and reduced by any principal payments received by the holder.

Gain or loss recognized on the sale, exchange or retirement of a 2019 Bond generally will be capital gain or loss and generally will be long-term capital gain or loss if at the time of sale, exchange or retirement the 2019 Bond has been held for more than one year. The deductibility of capital losses is subject to certain limitations. In addition, net investment income for purposes of the 3.8% Medicare tax described above will include gains from the sale or other disposition of the 2019 Bonds. Prospective investors should consult their own tax advisor concerning these tax law provisions.

Any amount realized on the sale, exchange or retirement of a 2019 Bond that is attributable to accrued interest will be taxable as interest unless previously taken into account. In addition, the tax treatment of the receipt of any redemption premium resulting from the exercise of an optional redemption of the 2019 Bonds (*see “THE 2019 BONDS – Optional Redemption, – Extraordinary Optional Redemption”*) is unclear, and prospective purchasers of the 2019 Bonds are urged to consult their tax advisors regarding the tax treatment of any such payment.

Defeasance or material modification of the terms of any 2019 Bond may result in a deemed reissuance thereof, in which event a beneficial owner of the defeased 2019 Bond generally will recognize taxable gain or loss equal to the difference between the amount realized from the sale, exchange or retirement (less any accrued qualified stated interest which will be taxable as such) and the beneficial owner’s adjusted tax basis in the 2019 Bond. Prospective purchasers of the 2019 Bonds are urged to consult their tax advisors regarding the foregoing matters.

## **Taxation of Tax-Exempt Investors**

Special considerations apply to employee benefit plans and other investors (“Tax-Exempt Investors”) that are subject to tax only on their unrelated business taxable income (“UBTI”). A Tax-Exempt Investor’s income from the 2019 Bonds generally will not be treated as UBTI under current law, so long as such Tax-Exempt Investor’s acquisition of such 2019 Bonds is not debt-financed. Tax-Exempt Investors should consult with their own tax advisors concerning these special considerations.

In addition, the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the Code generally prohibit certain transactions between an employee benefit plan under ERISA or tax-qualified retirement plans and individual retirement accounts under the Code (collectively, the “Plans”) and persons who, with respect to a Plan, are fiduciaries or other “parties in interest” within the meaning of ERISA or “disqualified persons” within the meaning of the Code. The investment of the assets of the Plans also must satisfy the standards of fiduciary conduct prescribed by ERISA, e.g., prudence and diversification. All fiduciaries of Plans, in consultation with their advisors, should carefully consider the impact of ERISA and the Code on an investment in any 2019 Bonds.

## **Non-United States Holders**

The following applies to a holder if the holder is a beneficial owner of a 2019 Bond and is not a United States holder or a United States partnership (or entity treated as a partnership for United States federal income tax purposes) (hereinafter a “non-United States holder”). Special rules which will not be addressed herein may apply if a non-United States holder is a “controlled foreign corporation” or a “passive foreign investment company” for United States federal income tax purposes. If a non-United States holder is such an entity, the non-United States holder should consult its tax advisor to determine the tax consequences that may be relevant to the non-United States holder.

Subject to the discussion below under “Foreign Account Tax Compliance Act,” all payments on a 2019 Bond made to a non-United States holder and any gain realized on a sale, exchange, or other disposition of a 2019 Bond will be exempt from United States federal income and withholding tax, provided that:

- the non-United States holder does not own, actually or constructively, 10% or more of the Issuer’s outstanding capital or profit interests within the meaning of the Code and the Treasury regulations;
- the non-United States holder is not a controlled foreign corporation related, directly or indirectly, to the Issuer through stock ownership;
- the non-United States holder is not a bank whose receipt of interest on the 2019 Bond is described in Section 881(c)(3)(A) of the Code;
- the non-United States holder has fulfilled the certification requirement described below;
- such payments are not effectively connected with the conduct by the non-United States holder of a trade or business in the United States; and
- in the case of gain realized on the sale, exchange, or other disposition of a 2019 Bond, if the non-United States holder is a nonresident alien individual, the non-United States holder is not present in the United States for 183 or more days in the taxable year of the disposition where certain other conditions are met.

The certification requirement referred to above will be fulfilled if the non-United States holder provides its name and address to the Trustee on IRS Form W-8BEN or W-8BEN-E, as applicable (or an acceptable substitute), and certifies, under penalties of perjury, that the holder is not a United States person. Prospective investors should consult their tax advisors regarding possible additional reporting requirements.

If the non-United States holder of a 2019 Bond is engaged in the conduct of a trade or business in the United States, and if payments on a 2019 Bond, or gain realized on its sale, retirement or other taxable disposition of the 2019 Bonds are effectively connected with the conduct of such trade or business, and are attributable to a permanent establishment maintained by the non-United States holder in the United States under any applicable tax treaty, the non-United States holder will generally be taxed in the same manner as a United States holder (*see “United States Holders” above*), except that the non-United States holder will be required to provide a properly executed IRS Form W-8ECI in order to claim an exemption from withholding tax and such holder may be subject to an additional, up to 30%, branch profits tax.

Recently proposed legislation could impose United States withholding tax on payments of interest and proceeds of sale in respect of the 2019 Bonds to a non-United States holder that does not comply with certain disclosure requirements related to the non-United States holder. *See the “Foreign Account Tax Compliance Act” discussion below.*

Non-United States holders should consult their tax advisors with respect to other tax consequences of the ownership of the 2019 Bonds.

### **Information Reporting and Backup Withholding**

Information returns may be filed with the IRS in connection with payments on the 2019 Bonds and the proceeds from a sale, exchange, or other disposition of the 2019 Bonds. Holders may receive statements containing the information reflected on these returns. If the holder is a United States holder, the holder may be subject to United States backup withholding tax on these payments if it fails to provide its taxpayer identification number to the paying agent and comply with certification procedures or otherwise establish an exemption from backup withholding. If the holder is not a United States holder, it may be subject to United States backup withholding tax on these payments unless the holder complies with certification procedures to establish that the holder is not a United States person. The certification procedures required of the holder to claim the exemption from withholding tax on certain payments on the 2019 Bonds described above will satisfy the certification requirements necessary to avoid the backup withholding tax as well.

The amount of any backup withholding made from a payment will be allowable as a credit against the holder’s United States federal income tax liability and may entitle the holder to a refund, provided that the holder timely furnishes the required information to the IRS. United States holders should consult their tax advisors regarding the application of information reporting and backup withholding rules in their particular situations, the availability of an exemption therefrom, and the procedure for obtaining such an exemption, if applicable.

### **Foreign Account Tax Compliance Act**

Recent legislation and IRS guidance concerning foreign account tax compliance rules (“FATCA”) impose United States withholding tax on interest paid to certain foreign financial institutions and non-financial foreign entities if certain disclosure requirements related to United States accounts or ownership are not satisfied. No additional amounts will be paid in respect of any such withholding. Non-United States holders and those holding through foreign accounts should consult their tax advisors with respect to FATCA withholding on the 2019 Bonds.

## **Certain State and Local Tax Consequences**

In addition to the United States federal income tax consequences described above, prospective investors should consider the potential state and local tax consequences of an investment in the 2019 Bonds. State income tax law may vary substantially from state to state, and this discussion does not purport to describe any aspect of the income tax laws of any state or locality. Therefore, potential purchasers should consult their own tax advisors with respect to the various state and local tax consequences of an investment in the 2019 Bonds.]

## **LITIGATION**

There is now no litigation of any nature to which the Authority is a party pending or, to the knowledge of the Authority, threatened against it to restrain or enjoin the issuance, sale, execution or delivery of the 2019 Bonds, or in any way contesting or affecting the validity of the 2019 Bonds or any proceedings taken with respect to the issuance or sale thereof or the Authority's power and authority to issue the 2019 Bonds, or in any way contesting or affecting the validity of or application of the moneys or the security provided for the 2019 Bonds.

There is no litigation pending or, to the best knowledge of the University, threatened against it which, even if adversely determined against the University, would have a material adverse effect on the University's financial position or future operations.

## **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

The arithmetical accuracy of certain computations included in the schedules provided by the Underwriters on behalf of the University relating to (1) computations of forecasted receipts of principal and interest on the investments deposited in the Escrow Fund, and the forecasted payments of principal and interest to redeem the Refunded Bonds, and (2) computation of the yield on the securities deposited into the escrow fund will be examined by \_\_\_\_\_ (the "Verification Agent"). Such computations will be based solely on assumptions and information supplied by the Underwriters on behalf of the University. The Verification Agent has restricted its procedures to examining the arithmetical accuracy of certain computations and will not make any study or evaluation of the assumptions and information on which the computations are based and, accordingly, will not express an opinion on the data used, the reasonableness of the assumptions, or the achievability of the forecasted outcome.

## **RELATIONSHIP OF PARTIES**

Kaufman & Canoles, a Professional Corporation, Bond Counsel, also serves from time to time as counsel to the Underwriter and the Trustee in transactions unrelated to the issuance of the 2019 Bonds.

McGuireWoods LLP, counsel to the Underwriter, also serves from time to time as counsel to the University and Trustee in transactions unrelated to the issuance of the 2019 Bonds. Additionally, certain attorneys employed by McGuireWoods LLP serve as professors at the University's law school.

## **CONTINUING DISCLOSURE**

To permit compliance by the purchasers of the 2019 Bonds with the continuing disclosure requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission (the "SEC"), the University will execute a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement"), in substantially the form set forth in **Appendix E**, at closing agreeing to provide certain annual financial information and material event notices required by the Rule. Such information will be

filed through the Electronic Municipal Market Access System (“EMMA”) maintained by the Municipal Securities Rulemaking Board (the “MSRB”) and may be accessed through the Internet at emma.mrsb.org. As described in **Appendix E**, the Continuing Disclosure Agreement requires the University to provide only limited information at specific times, and the information provided may not be all the information necessary to value the 2019 Bonds at any particular time. The University may from time to time disclose certain information and data in addition to that required by the Continuing Disclosure Agreement. If the University chooses to provide any additional information, the University shall have no obligation to continue to update such information or to include it in any future disclosure filing.

Failure by the University to comply with the Continuing Disclosure Agreement is not an event of default under the 2019 Bonds or the Loan Agreement. The sole remedy for a default under the Continuing Disclosure Agreement is to bring an action for specific performance of the University’s covenants thereunder, and no assurance can be provided as to the outcome of any such proceeding.

[In making timely filings of its Annual Reports for the Fiscal Years ended June 30, 2015 through June 30, 2017, the CUSIP information necessary to link such filings to certain maturities of the University’s Education Facilities Revenue Bonds (Washington and Lee University), Series 2015A was inadvertently omitted from such filings. All such filings were otherwise available from MSRB with respect to the other University undertakings. The University has taken steps to ensure future compliance with its undertakings regarding Rule 15c2-12.]

See **Appendix E** for a more detailed description of the University’s continuing disclosure undertaking.

## FINANCIAL STATEMENTS

The financial statements of the University as of June 30, 20\_\_ , and for the period then ended, have been audited to the extent set forth in their report by KPMG, LLP, independent certified public accountants, and are included as **Appendix B** in reliance upon such report. **KPMG, LLP, has not been engaged to perform, and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. KPMG, LLP, also has not performed any procedures relating to this Official Statement.**

## MISCELLANEOUS

The references herein to the Indenture, the Loan Agreement, the 2019 Note and other materials and documents are only brief outlines of certain provisions thereof and do not purport to summarize or describe all the provisions thereof. Reference is hereby made to such instruments, materials and documents for the complete provisions thereof, copies of which are available for inspection at the offices of the Trustee or the Underwriter for further information.

Except with respect to the sections herein “**The Authority**,” “**Tax Matters**,” “**Bonds Eligible for Investment and Security for Public Deposits**,” and “**Legal Matters**” and the first paragraph in the section “**Litigation**” and in Appendices C and D summarizing the financing documents and the form of the bond counsel opinion, all information in this Official Statement and in the Appendices has been furnished by the Underwriter or the University. Such information has been reviewed by representatives of the Underwriter and the University. Those representatives of the University have approved all such information relating to the University for use in this Official Statement. The Authority assumes no responsibility for the accuracy or completeness of the information in this Official Statement except in the sections herein “**The Authority**” and, insofar as it relates to the Authority, “**Litigation**.”

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in the Rule; therefore, no representation or warranty is given as to the accuracy or completeness of such information.

Certain statements included or incorporated by reference in this Official Statement, including the Appendices hereto, constitute "forward-looking statements." Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "project," "anticipate," "intend," "believe," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. No assurance is given that actual results will meet the University's forecasts in any way, regardless of any level of optimism communicated in this Official Statement, including the Appendices hereto. The University will not issue any updates or revisions to forward-looking statements if or when its expectations, or events, conditions or circumstances on which such statements are based, change.

The Trustee has neither reviewed nor participated in the preparation of this Official Statement.

The distribution of this Official Statement has been duly authorized by the Authority and approved by the University. For purposes of compliance with the Rule, this Preliminary Official Statement constitutes an official statement of the Authority that has been deemed final by the Authority as of its date except for the omission of no more than the information permitted by the Rule.

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Chairman

**Approved:**

**THE WASHINGTON AND LEE UNIVERSITY**

By: \_\_\_\_\_  
Vice President for Finance  
and Treasurer

**THE WASHINGTON AND LEE UNIVERSITY**

**AUDITED FINANCIAL STATEMENTS OF THE WASHINGTON AND LEE UNIVERSITY  
FOR THE FISCAL YEAR ENDING JUNE 30, 20\_\_**



**DEFINITIONS OF CERTAIN TERMS AND SUMMARIES OF CERTAIN PROVISIONS OF THE  
FINANCING DOCUMENTS**

*Set forth herein are definitions of certain terms and summaries of certain sections of the Loan Agreement and the Indenture. These summaries do not purport to be complete, and reference is made to the respective documents, copies of which are on file with the Trustee, for a complete statement of the rights, duties and obligations of the parties thereto. The headings herein are not part of the respective documents but have been added for ease of reference only.*

## DEFINITIONS OF CERTAIN TERMS

*The following are summaries of definitions of certain terms used in the Loan Agreement and the Indenture. Certain other terms are defined elsewhere in this Official Statement.*

**“Authorized Representative of the University”** shall mean the President or Vice President for Finance and Treasurer of the University and such other person or persons designated to act on behalf of the University by a certificate signed by its President or Vice President for Finance and Treasurer and filed with the Authority and the Trustee.

**“Bondholder”** or **“holder”** shall mean the registered owner of any Bond.

**“Bonds”** or **“2019 Bonds”** shall mean the Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019, authorized to be issued by the Authority pursuant to the Indenture.

**“Business Day”** shall mean any Monday, Tuesday, Wednesday, Thursday or Friday on which commercial banking institutions generally are open for business in the Commonwealth of Virginia.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, as it applies to the Bonds, including applicable Treasury Regulations and revenue rulings issued thereunder. References in the Indenture to Sections of the Code are to the sections thereof as they exist on the date of the Indenture, but shall include any successor provisions thereof.

**“Defeasance Obligations”** shall mean

- (a) noncallable Government Obligations,
- (b) Government Certificates,
- (c) noncallable obligations of state or local government municipal bond issuers that are rated by S&P or Moody’s in the highest rating category established by such rating service without regard to any refinement or gradation of such rating category by numerical modifier or otherwise, provision for the payment of the principal of and interest on which shall have been made by deposit with a trustee or escrow agent of Government Obligations the maturing principal of and interest on such Government Obligations, when due and payable, shall provide sufficient money to pay the principal of, premium, if any, and interest on such obligations, and
- (d) evidences of noncallable ownership of a proportionate interest in specified obligations described in subsection (c), which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian.

**“Facilities”** shall mean the higher education, collegiate facilities currently operated by the University on its campus, primarily located in the City of Lexington, Virginia, including fixtures and equipment, and any replacements, modifications, additions or improvements thereto.

**“Fiscal Year”** shall mean, with respect to the University, the 12-month period ending June 30 of each calendar year or such other annual fiscal accounting period for the University as may be established in the future by its board of trustees and evidenced to the Trustee in a certificate signed by an Authorized Representative of the University.

**“Government Certificates”** shall mean evidences of ownership of proportionate interest in future interest or principal payments of Government Obligations, including depository receipts thereof. Investments

in such proportionate interest must be limited to circumstances wherein (a) a bank or trust company acts as custodian and holds the underlying Government Obligations; (b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying Government Obligations; and (c) the underlying Government Obligations are held in a special account, segregated from the custodian's general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated.

**“Government Obligations”** shall mean bonds, notes and other obligations of the United States of America and securities unconditionally guaranteed as to the payment of principal, if applicable, and interest by the United States of America or any agency thereof.

**“Investment Obligations”** shall mean Government Obligations and

(a) obligations of (i) Federal National Mortgage Associations, (ii) Federal Home Loan Banks, (iii) Federal Financing Bank, (iv) Federal Home Loan Mortgage Corporation, (v) Government National Mortgage Association, (vi) Federal Housing Administration, (vii) Federal Intermediate Credit Banks, (viii) Federal Banks for Cooperatives, and (ix) Federal Land Banks;

(b) evidences of ownership of a proportionate interest in specified Government Obligations or obligations described in clause (a) above, which Government Obligations or obligations described in clause (a) above are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50,000,000;

(c) legally authorized bonds, notes and other evidences of indebtedness of any city, county, town, district, authority or other public body situated in any one of the states of the United States, upon which there is no default, rated by both Moody's and S&P in one of their two highest respective investment grades without regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(d) savings accounts, time deposits and certificates of deposit in any bank, including the Trustee, if (i) the credit of such bank is rated by both Moody's and S&P in one of their two highest respective investment grades without regard to any refinement or gradation of such rating category by numerical modifier or otherwise, or (ii) such accounts or certificates are fully insured by Federal Deposit Insurance Corporation insurance;

(e) negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of “Prime 1” or better by Moody's and “A-1” or better by Standard & Poor's for maturities of one year or less, and a rating of at least “AA” (without regard to any refinement or gradation of such rating category by numerical modifier or otherwise) for maturities over one (1) year;

(f) commercial paper with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States or of any state, rated at least P-1 by Moody's and at least A-1 by S&P;

(g) bankers' acceptances rated at least P-1 by Moody's or at least A-1 by S&P;

(h) savings accounts and certificates of savings and loan associations that are under supervision of the Commonwealth of Virginia and federal associations organized under the laws of the United States of America and under federal supervision, but only to the extent that such accounts and certificates of state or federal associations are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency;

(i) corporate notes of issuing corporations organized under the laws of the United States or of any state, rated at least Aa by Moody's and at least AA by S&P without regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(j) guaranteed investment agreements with a commercial bank or trust company (including the Trustee or an affiliate thereof) organized under the laws of any state of the United States of America or any national banking association or a branch of a foreign bank duly licensed under the laws of the United States of America or any state or territory thereof, provided that the bonds or debentures of such commercial banks or trust company or national banking association or branch of a foreign bank are rated by Moody's at the time of the investment not lower than Moody's "Aa" and are rated by S&P at such time not lower than S&P's "AA" or, if the debt obligations of such bank or trust company do not carry a separate rating, if said bank or trust company is the Principal Bank of a bank holding company whose debt obligations are so rated ("Principal Bank" shall mean a bank, the assets of which represent at least 75% of the assets of the holding company of which it is a part);

(k) guaranteed investment agreements with any property and casualty insurance company or life insurance company whose bonds or debentures or claims paying ability is rated by Moody's at the time of the investment not lower than Moody's "Aa" and by S&P at such time not lower than S&P's "AA";

(l) shares of open-end investment funds, provided that i) the fund is registered under the Federal Investment Company Act of 1940, ii) complies with the diversification, quality and maturity requirements of Rule 2(a)-7, or any successor rule, of the United States Securities and Exchange Commission, and iii) is rated in the highest rating category by either Moody's or Standard and Poor's, including any such funds administered by the Trustee;

(m) shares of any state administered pool investment fund in which the Authority is statutorily permitted or required to invest, rated in the highest rating category by either Moody's or S&P; and

(n) repurchase agreements with respect to and secured by Government Obligations or by obligations described in clause (a) above, which agreements may be entered into with a bank (including without limitation the Trustee, a trust company, financial services firm or a broker dealer which is a member of the Securities Investors Protection Corporation, provided that (i) the Trustee or a custodial agent of the Trustee has possession of the collateral and that the collateral is, to the knowledge of the Trustee, free and clear of third-party claims, (ii) a master repurchase agreement or specific written repurchase agreement governs the transaction, (iii) the collateral securities are valued no less frequently than monthly, and (iv) the fair market value of the collateral securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%;

and provided further that either (A) title to and/or possession of such securities is transferred to the Trustee in its capacity as Trustee, (B) the securities are held by a third party (not as agent for the bank or broker/dealer) for the benefit of the Trustee and segregated from securities owned generally by such third party or the bank, (C) a perfected security interest under the Uniform Commercial Code of Virginia or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. in such securities is created for the benefit of the holders of the Bonds, or (D) if the repurchase agreement is with the bank serving as Trustee or related to the trust company serving as Trustee, the third party holding such securities holds them as agent for the Trustee as fiduciary for the holders of the Bonds and not as agent for the bank serving as Trustee or related to the trust company serving as Trustee in its commercial capacity or any other party. Any investment in Government Obligations or in obligations described in (a), (b) and (c) above may be made in the form of an entry made on the records of the issuer of the particular obligation.

**"Moody's"** shall mean Moody's Investors Service or its successor in the business of providing investment rating services, provided that if neither Moody's nor any such successor is then in such business the references to Moody's and ratings thereof shall no longer be requirements of the bond documents.

**"Net Proceeds"** shall mean the gross proceeds from any insurance recovery or condemnation award remaining after payment of attorneys' fees, fees and expenses of the Trustee and all other expenses incurred in the collection of such gross proceeds.

**“Opinion”** or **“Opinion of Counsel”** shall mean a written opinion of an attorney or firm of attorneys acceptable to the Trustee, who may be counsel for the Authority or the University’s General Counsel.

**“Outstanding”** when used with reference to Bonds shall mean, as of a particular date, all Bonds theretofore issued under the Indenture, except:

(a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds for the payment of which money, cash or Defeasance Obligations, or a combination of both, sufficient to pay on the date when such Bonds are to be paid or redeemed, the principal of, and the premium, if any, and the interest thereon accruing to such date are held by the Trustee or an escrow agent for the Trustee in trust for the holders of such Bonds. Defeasance Obligations shall be deemed to be sufficient to pay or redeem Bonds on a specified date if the principal of and the interest on such Defeasance Obligations, when due, will be sufficient to pay on such date the principal of and the premium, if any, and interest accruing on, such Bonds to such date; or

(c) Bonds in exchange for or in lieu of which other Bonds have been issued.

**“Projects”** shall mean the Projects refinanced with the 2019 Bonds.

**“Prior Obligations Fund”** shall mean the Prior Obligations Fund created under the Indenture.

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or its successor in the business of providing investment rating services, provided that if neither S&P’s nor any such successor is then in such business the references to S&P’s and ratings thereof shall no longer be requirements of the bond documents.

**“Supplemental Indenture”** shall mean any Supplemental Indenture entered into pursuant to the terms of the Indenture.

## THE LOAN AGREEMENT

**Payments by the University.** The University shall make all payments required by the 2019 Note as and when they become due and shall promptly pay all other amounts necessary to enable the Trustee to make the transfers required by the Indenture. The University shall also pay (a) the reasonable fees of the Trustee for services rendered and for expenses reasonably incurred by it under the Indenture and as Trustee, bond registrar and paying agent on the Bonds, (b) the reasonable costs and expenses of the Authority, including the reasonable fees of its counsel and other advisers, directly related to the Project or the Bonds, and an annual fee, and (c) all other amounts that the University agrees to pay under the terms of the Loan Agreement.

The University shall, on behalf of the Authority, rebate or cause to be rebated to the United States certain arbitrage earnings on its non-purpose obligations as required by the Code and any regulations promulgated thereunder.

**Maintenance of Corporate Existence.** The University shall maintain its corporate existence and its qualification to do business in Virginia and shall not, without the prior consent of the Trustee, sell or transfer any beneficial interest in the University, or dissolve or otherwise dispose of all or substantially all of its assets, consolidate with or merge into another domestic corporation (i.e. a corporation incorporated under the laws of the United States of America or one of the states thereof) or permit one or more other domestic corporations to consolidate with or merge into it; provided, however, that the University may consolidate with or merge into another domestic corporation (i.e., a corporation incorporated under the laws of the United States of America or one of the states thereof), or permit one or more domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another domestic corporation all or substantially all of its assets and thereafter dissolve, or sell or assign all or substantially all of its assets to a governmental unit, if after giving effect to such consolidation, merger, transfer, sale or assignment the surviving, resulting or transferee corporation or governmental unit:

- (a) will not be in default under any covenant under the Loan Agreement;
- (b) is either a “501(c)(3) organization” described in Section 145 of the Code or a “governmental unit” within the meaning of Section 141(b)(6) of the Code, provided that the surviving, resulting or transferee corporation or governmental unit need not qualify as a 501(c)(3) organization or governmental unit if the Trustee has received an Opinion of Bond Counsel that such action will not adversely affect the exemption of interest on the Bonds from gross income from federal income tax purposes;
- (c) if it is not the University, has the power to assume and assumes in writing all of the obligations of the University in the Loan Agreement and in the 2019 Note; and
- (d) if it is not a Virginia corporation or a political subdivision of the Commonwealth of Virginia, either qualifies to do business in Virginia or files with the Trustee a consent to service of process reasonably acceptable to the Trustee.

**Events of Default.** Each of the following events constitutes an Event of Default under the Loan Agreement:

- (a) Failure of the University to make any payment on the 2019 Note when due and payable, whether at maturity, redemption, acceleration or otherwise pursuant to the terms thereof or the Loan Agreement, and the continuation of such failure for three Business Days;
- (b) Failure of the University to observe and perform any of its other covenants, conditions or agreements hereunder for a period of 60 days after notice specifying such failure and requesting that it be remedied, given by the Authority or the Trustee to the University (unless the University and the Trustee shall agree in writing to an extension of such time prior to its expiration), or in the case of any such default that cannot

with due diligence be cured within such 60 day period, failure of the University to proceed promptly to cure the same and thereafter cure such default with due diligence;

(c) Failure of the University to pay generally its debts as they become due and certain other actions or events of bankruptcy of the University.

Certain of the University's obligations (other than its obligations to pay certain fees and expenses, taxes, other governmental charges and utility charges and to maintain insurance, its corporate existence and its tax-exempt status) may be suspended if by reason of force majeure, as defined in the Loan Agreement, the University is unable to perform such obligations.

**Remedies.** Whenever any Event of Default under the Loan Agreement shall have occurred and is continuing, the Trustee as the assignee of the Authority:

(a) May and, if there has been an acceleration of the Bonds under the Indenture, shall, declare all amounts payable as principal and interest on the 2019 Note to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) May have access to and inspect, examine and copy the financial books, records and accounts of the University.

(c) May take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition or agreement of the University under the 2019 Note or the Loan Agreement.

**Option To Prepay 2019 Note.** The University shall have the option to prepay the 2019 Note in whole at any time, provided that upon the effective date of such prepayment all Bonds and the interest have been paid within the meaning of the defeasance provisions of the Indenture.

The University shall also have the option to prepay the 2019 Note in part at any time, so long as all payments then due under the 2019 Note have been made. The amount prepaid shall be used if Bonds are then redeemable as provided in the Indenture, for the redemption of Bonds to the extent possible under the Indenture; otherwise, for transfer to the Bond Fund.

**Amendments.** Neither the Loan Agreement nor the 2019 Note shall be amended or supplemented except in accordance with provisions of the Indenture.

## THE INDENTURE

**Provisions for Bonds.** The Indenture makes provisions for the issuance of the Bonds and all other terms pertaining to the Bonds as described in the Official Statement.

**Assignment and Pledge.** As security for the Bonds the Authority assigns and pledges to the Trustee, and grants a security interest to the Trustee, in (a) the 2019 Note and the rights of the Authority under the Loan Agreement, except for payments made to the Authority for its expenses, fees, and for any indemnification made to it, (b) the funds, including moneys and instruments therein, held by the Trustee or the University pursuant to the Indenture, and (c) all other property of any kind mortgaged, pledged or hypothecated at any time as and for additional security under the Indenture by the Authority or anyone on its behalf or with its consent.

**Application of Proceeds.** The Indenture establishes the Prior Obligations Fund, which has within it an Issuance Expense 2019 Subaccount. Amounts therein may only be disbursed pursuant to the requisition procedure provided in the Indenture to pay costs of issuance related to the 2019 Bonds.

**Bond Fund.** The Indenture establishes the Bond Fund to be held by the Trustee. There shall be deposited in the Bond Fund accrued interest received upon the issuance of the Bonds, payments received on the 2019 Note and all other moneys received by the Trustee with respect to the Bonds. Moneys in the Bond Fund will be used solely for the payment of interest on the Bonds and for the payment of the principal of and premium, if any, on the Bonds, whether at maturity, by acceleration, call for redemption or otherwise.

**Investment of Moneys in Funds.** Moneys held for the credit of funds and accounts created under the Indenture shall be continuously invested and reinvested by the Trustee, as directed by an Authorized Representative of the University, in Investment Obligations to the extent practicable.

**Defaults and Remedies on Default.** Each of the following constitutes an “Event of Default” under the Indenture:

- (a) Default in the due and punctual payment of any interest on any Bond;
- (b) Default in the due and punctual payment of the principal of any Bond (whether at maturity, by acceleration, call for redemption or otherwise);
- (c) Subject to certain cure rights specified in the Indenture, default in the observance or performance of any other covenant, condition or agreement on the part of the Authority under the Indenture or in the Bonds; or
- (d) An “Event of Default” under the Loan Agreement.

Upon the occurrence and continuation of any Event of Default, the Trustee may, and if requested by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding shall, by notice to the Authority, declare the entire unpaid principal of and premium, if any, and interest on the Bonds due and payable and, thereupon, the entire unpaid principal of and premium, if any, and interest on the Bonds shall forthwith become due and payable. The Authority will forthwith pay to the holders of the Bonds the entire unpaid principal of and accrued interest on such Bonds, but only from the payments, receipts and proceeds specifically pledged for such purpose in the Indenture.

**Supplemental Indentures.** The Authority and the Trustee may, without the consent of or notice to any of the Bondholders, enter into an indenture or indentures supplemental to the Indenture for any one or more of the following purposes:

- (a) to cure any ambiguity, formal defect or omission in the Indenture;
- (b) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or either of them;
- (c) to subject to the Indenture additional revenues, properties or collateral;
- (d) to modify, amend or supplement the Indenture in such manner as required (i) to permit the qualification of the Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or any state securities (Blue Sky) law, or (ii) to prevent the Authority, the Trustee or the University from being subject to the Investment Company Act of 1940, as amended, or any similar federal statute hereafter in effect; and
- (e) to make any other change that, in the opinion of the Trustee based solely on an Opinion of Counsel, shall not prejudice in any material respect the rights of the holders of Bonds then Outstanding.



Except for the Supplemental Indentures described above, the holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right from time to time to consent to and approve the execution by the Authority and the Trustee of such other indenture or indentures supplemental to the Indenture as shall be deemed necessary or desirable by the Authority for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture or in any Supplemental Indenture; provided, however, that nothing in the Indenture shall permit, or be construed as permitting (A) an extension of the maturity of the principal of or the interest on any Bond, (B) a reduction in the principal amount of any Bond or the rate of interest thereon, (C) an extension of time or a reduction in amount of any payment required by any sinking fund that may be applicable to any Bonds, (D) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (E) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, without the consent and approval of the holders of all of the Bonds then Outstanding.

**Amendments to Loan Agreement and 2019 Note.** The Authority and the Trustee may, without the consent of or notice to any of the Bondholders, consent to any amendment, change or modification of the Loan Agreement or the 2019 Note as may be required:

- (a) by the provisions of the Loan Agreement, the 2019 Note or the Indenture;
- (b) to cure any ambiguity or formal defect or omission therein;
- (c) to make any change as permitted by the Loan Agreement in connection with the requirements of the Code relating to “rebate”; or
- (d) in connection with any other change therein that, in the opinion of the Trustee which may be based solely on an Opinion of Counsel, shall not prejudice in any material respect the rights of the holders of the Bonds then Outstanding.

**Resignation or Removal of Trustee.** The Trustee may at any time resign from the trusts created by the Indenture by giving 60 days’ notice to the Authority, the University and each owner of Bonds then Outstanding. Such resignation shall take effect upon the appointment of a successor or temporary Trustee by the Bondholders, the Authority or a court of competent jurisdiction.

The Trustee may be removed at any time by (a) an instrument or concurrent instruments in writing delivered to the Trustee and to the Authority and signed by the holders of a majority in aggregate principal amount of Bonds then Outstanding, or (b) by the Authority at the direction of the University by notice in writing delivered to the Trustee sixty days before the removal date; provided, however, that the Authority shall have no right to remove the Trustee during any time when an Event of Default has occurred and is continuing or when an event has occurred and is continuing or condition exists that with the giving of notice or the passage of time, or both, would be an Event of Default. The removed Trustee shall return to the University the amount of the Trustee’s annual fee allocable to the portion of the then current year remaining after the removal date. Notwithstanding the foregoing, nothing contained in the Indenture shall relieve the University of its obligation to pay the Trustee’s expenses incurred to the date of such removal.

**Discharge of Indenture.** If (a) all Bonds shall have become due and payable in accordance with their terms or otherwise as provided in the Indenture or have been duly called for redemption or irrevocable instructions to call the Bonds or pay them at maturity have been given by the Authority to the Trustee, (b) the Trustee holds cash or Defeasance Obligations registered in the name of the Trustee the interest on which and principal at maturity will be sufficient, as verified by an independent certified public accountant or other consultant reasonably acceptable to the Trustee, (i) to redeem in accordance with the relevant section of the Indenture and in any Supplemental Indenture all Bonds that have been called for redemption on the date set for such redemption, (ii) to pay at maturity all Bonds not irrevocably called for redemption, and (iii) to pay interest accruing on all Bonds prior to their redemption or payment at maturity, and (c) arrangements, satisfactory to the

Trustee, have been made to pay to the Trustee its reasonable fees and expenses and any other fees and expenses for which the University is responsible under the Loan Agreement, including any payments to the United States of America required by the Indenture or any Supplemental Indenture and the costs and expenses of canceling and discharging the Indenture, then except as otherwise provided in the Indenture, the Indenture shall cease to be of further effect and the Trustee shall on demand and at the expense of the University execute and deliver to the Authority such instruments in writing acknowledging the satisfaction of the Indenture and as shall be requisite to cancel any liens securing the Indenture, and assign and deliver any property at the time subject to the Indenture that may then be in its possession, except (1) amounts in funds created by the Indenture required to be paid to the University and (2) funds or securities in which such funds are invested that are held by the Trustee for the payment of the Bonds and other fees and expenses described.

Bonds for the payment or redemption of which cash or Defeasance Obligations, the principal of and premium, if any, and interest on which will be sufficient therefor, as determined by the Trustee in reliance on a report of an independent certified public accountant or other consultant reasonably acceptable to the Trustee, shall have been deposited with the Trustee (whether upon or prior to the date of their maturity or their redemption date) shall be deemed to be paid and no longer Outstanding; provided, however, that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or arrangements satisfactory to the Trustee shall have been made for the giving thereof.

**FORM OF PROPOSED BOND COUNSEL OPINION**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

## CONTINUING DISCLOSURE AGREEMENT

This **CONTINUING DISCLOSURE AGREEMENT**, dated December \_\_, 2019 (the “Disclosure Agreement”), is executed and delivered by The Washington and Lee University (the “University”), in connection with the issuance by the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”), of its \$\_\_\_\_\_ Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019 (the “Bonds”), pursuant to an Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), between the Authority and U.S. Bank National Association, as trustee (the “Trustee”). The University hereby covenants and agrees as follows:

**Section 1. Purpose.** This Disclosure Agreement is being executed and delivered by the University for the benefit of the holders of the 2019 Bonds and in order to assist the purchasers of the 2019 Bonds in complying with the provisions of Section (b)(5)(i) of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission by providing certain annual financial information and material event notices required by the Rule (collectively, “Continuing Disclosure”).

**Section 2. Annual Disclosure.** (a) The University shall provide annually financial information and operating data in accordance with the provisions of Section (b)(5)(i) of the Rule as follows:

(i) audited financial statements of the University, prepared in accordance with generally accepted accounting principles; and

(ii) the financial and operating data with respect to the University of the type described in **Appendix A** to the Authority’s Official Statement dated December \_\_, 2019, with respect to the 2019 Bonds in the tables in the sections “Student Enrollment” (but only the first two tables therein), “Tuition and Fees,” “Student Financial Aid,” “Fund-Raising,” “Endowment and Similar Funds and Funds Held in Trust by Others,” “Outstanding Long-Term Indebtedness,” and “Liquidity”, to the extent such items are not contained in the audited financial statements required by (i) above.

If the financial statements filed pursuant to Section 2(a)(i) are not audited, the University shall file such statements as audited when available.

(b) The University shall provide annually the financial information and operating data described in subsection (a) above (collectively, the “Annual Disclosure”) no later than December 1 of each year, commencing December 1, 2020, to the Municipal Securities Rulemaking Board (the “MSRB”).

(c) Any Annual Disclosure may be included by specific reference to other documents previously provided to the MSRB or filed with the SEC; provided, however, that any final official statement incorporated by reference must be available from the MSRB.

(d) The University shall file with the MSRB in a timely manner the notice specifying any failure to provide the Annual Disclosure by the date specified.

**Section 3. Event Disclosure.** The University shall file with the MSRB in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the 2019 Bonds:

(a) principal and interest payment delinquencies;

(b) non-payment related defaults, if material;

- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on any credit enhancement reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2019 Bonds, or other material events affecting the tax status of the 2019 Bonds;
- (g) modifications to rights of holders, if material;
- (h) bond calls, if material, and tender offers;
- (i) defeasances of all or any portion of the 2019 Bonds;
- (j) release, substitution, or sale of property securing repayment of the 2019 Bonds, if material;
- (k) rating changes;
- (l) bankruptcy, insolvency, receivership or similar event of the University;
- (m) the consummation of a merger, consolidation, or acquisition involving the University or the sale of all or substantially all of the assets of the University, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (n) appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (o) Incurrence of a Financial Obligation (as defined below) of the University, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the University, any of which affect security holders, if material; and
- (p) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the University, any of which reflect financial difficulties;

provided that nothing in this Section 3 shall require the University to maintain any debt service reserve, credit enhancement or credit or liquidity providers with respect to the 2019 Bonds or to pledge any property as security for repayment of the 2019 Bonds.

“Financial Obligation” shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of a payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation does not include municipal securities as to which a final official statement has been otherwise provided to the MSRB under the Rule.

**Section 4. Termination.** The obligations of the University hereunder will terminate upon the redemption, defeasance (within the meaning of the Rule) or payment in full of all the 2019 Bonds.

**Section 5. Amendment.** The University may modify its obligations hereunder without the consent of Bondholders, provided that this Disclosure Agreement as so modified complies with the Rule as

it exists at the time of modification and is accompanied by an opinion of counsel nationally-recognized in municipal securities laws that the amendments are permitted under current law. The University shall file in a timely manner a description of any such modification of its obligations hereunder to the MSRB.

**Section 6. Defaults.** (a) Failure by the University to comply with any covenant or obligation regarding the Continuing Disclosure specified in this Disclosure Agreement shall not constitute an “Event of Default” under the Indenture or under the Loan Agreement, dated as of December 1, 2019, between the University and the Authority, as provided therein.

(b) Notwithstanding subparagraph (a), any holder (within the meaning of the Rule) of Bonds then outstanding may, by notice to the University and the Trustee, proceed to protect and enforce its rights and the rights of the holders by an action for specific performance of the University’s covenant to provide the Continuing Disclosure.

**Section 7. Filing Method.** Any filing required hereunder shall be made by transmitting such disclosure, notice or other information in electronic format to the MSRB through the MSRB’s Electronic Municipal Market Access (EMMA) system pursuant to procedures promulgated by the MSRB.

**Section 8. Additional Disclosure.** The University may from time to time disclose certain information and data in addition to the Continuing Disclosure. Notwithstanding anything herein to the contrary, the University shall not incur any obligation to continue to provide, or to update, such additional information or data, unless it specifically agrees to such obligation.

**Section 9. Acknowledgment by University.** The University acknowledges and agrees that the Authority is not a material obligated person for purposes of the Rule and, therefore, is not required to provide any Annual Disclosure or notice of the occurrence of any of the events listed in Section 3, with respect to the 2019 Bonds.

**Section 10. Governing Law.** This Disclosure Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

**THE WASHINGTON AND LEE UNIVERSITY**

By: \_\_\_\_\_  
Vice President for Finance  
and Treasurer

**INFORMATION REGARDING THE DEPOSITORY  
TRUST COMPANY AND ITS BOOK-ENTRY SYSTEM**



## **INFORMATION REGARDING THE DEPOSITORY TRUST COMPANY AND ITS BOOK-ENTRY SYSTEM**

The description which follows of the procedures and recordkeeping with respect to beneficial ownership interests in the 2019 Bonds, payments of principal of and interest on the 2019 Bonds to The Depository Trust Company, New York, New York (“DTC”), its nominee, Participants or Beneficial Owners (each as hereinafter defined), confirmation and transfer of beneficial ownership interests in the 2019 Bonds and other bond-related transactions by and between DTC, Participants and Beneficial Owners is based solely on information furnished by DTC.

DTC will act as securities depository for the 2019 Bonds. The 2019 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the 2019 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (the “Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of the 2019 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2019 Bonds on DTC’s records. The ownership interest of each actual purchaser of each 2019 Bond (the “Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners, however, are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2019 Bonds are to be accomplished by entries made on the books of Direct or Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the 2019 Bonds, except in the event that use of the book-entry system for the 2019 Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the 2019 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2019 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holding on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the 2019 Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the 2019 Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority or the Trustee as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2019 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal of and interest payments on the 2019 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Authority or the Trustee subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the 2019 Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, 2019 Bond certificates will be printed and delivered.

The Authority or the Trustee may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, 2019 Bond certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Authority believes to be reliable, but the Authority takes no responsibility for the accuracy thereof.

Neither the Authority nor the Trustee has any responsibility or obligation to the Direct or Indirect Participants or the Beneficial Owners with respect to (a) the accuracy of any records maintained by DTC or any Direct or Indirect Participant; (b) the payment by any Direct or Indirect Participant of any amount due to any Beneficial Owner in respect of the principal of and interest on the 2019 Bonds; (c) the delivery or timeliness of delivery by any Direct or Indirect Participant of any notice to any Beneficial Owner that is required or permitted under the terms of the Agreement of Trust to be given to Bondholders; or (d) any other action taken by DTC, or its nominee, Cede & Co., as Bondholder, including the effectiveness of any action taken pursuant to an Omnibus Proxy.

So long as Cede & Co. is the registered owner of the 2019 Bonds, as nominee of DTC, references in this Official Statement to the Owners of the 2019 Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners, and Cede & Co. will be treated as the only holder of Bonds for all purposes under the Agreement of Trust.

The Authority may enter into amendments to the agreement with DTC or successor agreements with a successor securities depository, relating to the book-entry system to be maintained with respect to the 2019 Bonds without the consent of Beneficial Owners or Bondholders.

**INDENTURE OF TRUST**

**between**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
THE CITY OF LEXINGTON, VIRGINIA**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Dated as of December 1, 2019**

**\$ \_\_\_\_\_  
Educational Facilities Revenue Refunding Bonds  
(Washington and Lee University),  
Series 2019**

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Exhibit A: Form of Series 2019 Bond  
Exhibit B: Form of Requisition

This **INDENTURE OF TRUST** (this “Indenture”) dated as of December 1, 2019, between the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States, with a corporate trust office in Richmond, Virginia, as Trustee (in such capacity herein, together with any successor in such capacity, called the “Trustee”);

W I T N E S S E T H:

**WHEREAS**, the Authority has been duly organized pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”), which authorizes the creation of industrial development authorities by the several counties, cities and towns in the Commonwealth;

**WHEREAS**, the Act authorizes the Authority to finance or refinance the acquisition, construction, equipping, expansion, enlargement and improvement of facilities for use by nonprofit organizations described in Section 501(c)(3) of the Code, to loan funds to such organizations, to issue its revenue bonds for such purposes and to refund bonds previously issued for such purposes;

**WHEREAS**, The Washington and Lee University (the “University”), a not-for-profit Virginia non-stock corporation which is described in Section 501(c)(3) of the Code, exempt from taxation pursuant to Section 501(a) of the Code, is a private, accredited institution of higher education whose primary purpose is to provide collegiate education and not to provide religious training or theological education;

**WHEREAS**, at the request of the University, the Authority has agreed to assist the University by issuing its revenue refunding bonds for the purpose of (1) refunding all or a portion of the the Authority’s \$34,960,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2013 (the “Series 2013 Bonds”); (2) refunding all or a portion of the Virginia College Building Authority’s \$32,040,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2015A (the “Series 2015A Bonds”); and (3) financing costs of issuance, funded interest, if any, and reserves, if any, with respect to the Series 2019 Bonds;

**WHEREAS**, simultaneously with the issuance by the Authority of its Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019 (the “Series 2019 Bonds”) for the purposes set forth above, the University and the Authority will enter into a Loan Agreement dated as of the date of this Indenture (the “Loan Agreement”), and to evidence its payment obligations thereunder, the University will execute and deliver to the Authority its promissory note (the “Series 2019 Note”) in a principal amount equal to the aggregate principal amount of the Series 2019 Bonds;

**WHEREAS**, the Series 2019 Bonds and the Trustee’s certificate of authentication thereon are to be in substantially the form attached to this Indenture as Exhibit A, with appropriate variations, omissions and insertions as permitted or required by this Indenture;

**WHEREAS**, the Authority is entering into this Indenture to set forth the terms and conditions under which the Authority is issuing the Series 2019 Bonds;



**WHEREAS**, the Authority is securing the payment of the Series 2019 Bonds by assigning its rights as registered owner of the Series 2019 Note and certain of its rights under the Loan Agreement; and

**WHEREAS**, all things necessary to make the Series 2019 Bonds, when authenticated by the Trustee and issued as in this Indenture provided, valid and binding limited obligations of the Authority and to constitute this Indenture a valid and binding agreement securing the payment of the principal of and premium, if any, and interest on the Series 2019 Bonds have been done and performed and the execution and delivery of this Indenture and the execution and issuance of the Series 2019 Bonds, subject to the terms of this Indenture, have in all respects been duly authorized.

**NOW, THEREFORE, THIS INDENTURE PROVIDES** that as security for payment of the principal of and premium, if any, and interest on the Bonds and for the funds that may be advanced by the Trustee pursuant to this Indenture, the Authority does hereby pledge and assign to, and grant a security interest to the Trustee in the following described property:

A. The Series 2019 Note and all rights of the Authority under the Loan Agreement (except for certain rights to (1) payment of expenses pursuant to Section 4.1(b)(ii) thereof, (2) receipt of notices pursuant to Section 8.2 thereof and (3) indemnification pursuant to Section 5.8 thereof), and all other revenues and receipts derived by the Authority therefrom and thereunder.

B. The funds, including moneys and investments, held by the Trustee pursuant to this Indenture.

C. Any other property of every name and nature from time to time mortgaged, pledged, assigned or hypothecated as and for additional security under this Indenture by the Authority or by anyone in its behalf or with its consent in favor of the Trustee, which is hereby authorized to receive all such property at any time and to apply and hold the same subject to the terms of this Indenture.

**TO HAVE AND TO HOLD** all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Trustee and its successors in such trust and their assigns forever.

**IN TRUST**, however, for the equal and proportionate benefit and security of the holders from time to time of the Bonds without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the others, upon the terms and conditions hereinafter stated.

The Authority covenants and agrees with the Trustee and with the respective holders from time to time of the Bonds or any part thereof as follows:

## **ARTICLE I**

### **DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 101. Definitions.** The following words and terms as used in this Indenture shall have the following meanings unless a different meaning clearly appears from the context. All

other defined terms used but not defined in this Indenture shall have the same meaning set forth in Article I of the Loan Agreement unless the context clearly indicates to the contrary.

**“Act”** shall mean the Industrial Development and Revenue Bond Act, Chapter 49 of Title 15.2, Code of Virginia, of as amended.

**“Authority”** shall mean the Industrial Development Authority of the City of Lexington, Virginia, its successors and assigns.

**“Authorized Representative of the Authority”** shall mean the Chairman or Vice-Chairman of the Authority or such other person or persons as may be designated to act on behalf of the Authority by a certificate signed by its Chairman or Vice-Chairman and filed with the University and the Trustee.

**“Authorized Representative of the University”** shall mean the President or Vice President for Finance and Treasurer of the University and such other person or persons designated to act on behalf of the University by a certificate signed by its President or Vice President for Finance and Treasurer and filed with the Authority and the Trustee.

**“Bond Counsel”** shall mean a firm of attorneys nationally recognized on the subject of municipal bonds, which may be counsel to the Authority, the University or the Trustee, and reasonably acceptable to the Authority and the Trustee.

**“Bond Fund”** shall mean the Bond Fund created by Section 501.

**“Bondholder”** or **“holder”** shall mean the registered owner of any Bond.

**“Bonds”** or **“Series 2019 Bonds”** shall mean the \$\_\_\_\_\_ Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019, authorized to be issued by the Authority in Section 201.

**“Business Day”** means any day other than a Saturday, Sunday or day on which the New York Stock Exchange or banking institutions are authorized or required by law or executive order to be closed for commercial banking purposes in the Commonwealth of Virginia, New York City, or in any city in which is located the designated corporate trust office of the Trustee.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, as it applies to the Bonds, including applicable Treasury Regulations and revenue rulings issued thereunder. References in this Indenture to Sections of the Code are to the sections thereof as they exist on the date of the Indenture, but shall include any successor provisions thereof.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement between the University and the Trustee, as dissemination agent, dated December \_\_, 2019, relating to the Series 2019 Bonds, pertaining to disclosure of future material events and annual financial information in accordance with Rule 15c2-12 of the Securities Exchange Commission.

**“Defeasance Obligations”** shall mean

- (i) noncallable Government Obligations,
- (ii) Government Certificates,
- (iii) noncallable obligations of state or local government municipal bond issuers that are rated by S&P or Moody's in the highest rating category established by such rating service without regard to any refinement or gradation of such rating category by numerical modifier or otherwise, provision for the payment of the principal of and interest on which shall have been made by deposit with a trustee or escrow agent of Government Obligations the maturing principal of and interest on such Government Obligations, when due and payable, shall provide sufficient money to pay the principal of, premium, if any, and interest on such obligations, and
- (iv) evidences of noncallable ownership of a proportionate interest in specified obligations described in subsection (iii), which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian.

“**DTC**” shall mean the Depository Trust Company, New York, New York, its successors and assigns.

“**Event of Default**” shall mean any of the events enumerated in Section 1001.

“**Government Certificates**” shall mean evidences of ownership of proportionate interest in future interest or principal payments of Government Obligations, including depository receipts thereof. Investments in such proportionate interest must be limited to circumstances wherein (i) a bank or trust company acts as custodian and holds the underlying Government Obligations; (ii) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying Government Obligations; and (iii) the underlying Government Obligations are held in a special account, segregated from the custodian's general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated.

“**Government Obligations**” shall mean bonds, notes and other obligations of the United States of America and securities unconditionally guaranteed as to the payment of principal, if applicable, and interest by the United States of America or any agency thereof.

“**Indenture**” shall mean this Indenture, including any supplements or amendments to this Indenture as permitted by the terms of this Indenture.

“**Interest Payment Date**” shall mean dates on which interest payments on the Bonds are due to Bondholders. With respect to the Series 2019 Bonds, Interest Payment Date shall mean any January 1 or July 1.

“**Issuance Expenses**” shall have the meaning set forth in Section 403.

“**Issuance Expense 2019 Account**” shall mean the account in the Prior Obligations Fund created by Section 401.

**“Investment Obligations”** shall mean Government Obligations and

(a) obligations of (i) Federal National Mortgage Associations, (ii) Federal Home Loan Banks, (iii) Federal Financing Bank, (iv) Federal Home Loan Mortgage Corporation, (v) Government National Mortgage Association, (vi) Federal Housing Administration, (vii) Federal Intermediate Credit Banks, (viii) Federal Banks for Cooperatives, and (ix) Federal Land Banks;

(b) evidences of ownership of a proportionate interest in specified Government Obligations or obligations described in clause (a) above, which Government Obligations or obligations described in clause (a) above are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50,000,000;

(c) legally authorized bonds, notes and other evidences of indebtedness of any city, county, town, district, authority or other public body situated in any one of the states of the United States, upon which there is no default, rated by both Moody’s and S&P in one of their two highest respective investment grades without regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(d) savings accounts, time deposits and certificates of deposit in any bank, including the Trustee, if (i) the credit of such bank is rated by both Moody’s and S&P in one of their two highest respective investment grades without regard to any refinement or gradation of such rating category by numerical modifier or otherwise, or (ii) such accounts or certificates are fully insured by Federal Deposit Insurance Corporation insurance;

(e) negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of “Prime 1” or better by Moody’s and “A-1” or better by Standard & Poor’s for maturities of one year or less, and a rating of at least “AA” (without regard to any refinement or gradation of such rating category by numerical modifier or otherwise) for maturities over one (1) year;

(f) commercial paper with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States or of any state, rated at least P-1 by Moody’s and at least A-1 by S&P;

(g) bankers’ acceptances rated at least P-1 by Moody’s or at least A-1 by S&P;

(h) savings accounts and certificates of savings and loan associations that are under supervision of the Commonwealth of Virginia and federal associations organized under the laws of the United States of America and under federal supervision, but only to the extent that such accounts and certificates of state or federal associations are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency;

(i) corporate notes of issuing corporations organized under the laws of the United States or of any state, rated at least Aa by Moody’s, and at least AA by S&P without

regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(j) guaranteed investment agreements with a commercial bank or trust company (including the Trustee or an affiliate thereof) organized under the laws of any state of the United States of America or any national banking association or a branch of a foreign banks duly licensed under the laws of the United States of America or any state or territory thereof, provided that the bonds or debentures of such commercial banks or trust company or national banking association or branch of a foreign bank are rated by Moody's at the time of the investment not lower than Moody's "Aa" and are rated by S&P at such time not lower than S&P's "AA" or, if the debt obligations of such bank or trust company do not carry a separate rating, if said bank or trust company is the Principal Bank of a bank holding company whose debt obligations are so rated ("Principal Bank" shall mean a bank, the assets of which represent at least 75% of the assets of the holding company of which it is a part);

(k) guaranteed investment agreements with any property and casualty insurance company or life insurance company whose bonds or debentures or claims paying ability is rated by Moody's at the time of the investment not lower than Moody's "Aa" and by S&P at such time not lower than S&P's "AA";

(l) shares of open-end investment funds, provided that the fund i) is registered under the Federal Investment Company Act of 1940, ii) complies with the diversification, quality and maturity requirements of Rule 2(a)-7, or any successor rule, of the United States Securities and Exchange Commission, and iii) is rated in the highest rating category by either Moody's or S&P, including any such funds administered by the Trustee;

(m) shares of any state administered pool investment fund in which the Authority is statutorily permitted or required to invest, rated in the highest rating category by either Moody's or S&P; and

(n) repurchase agreements with respect to and secured by Government Obligations or by obligations described in clause (a) above, which agreements may be entered into with a bank (including without limitation the Trustee, a trust company, financial services firm or a broker dealer which is a member of the Securities Investors Protection Corporation, provided that (i) the Trustee or a custodial agent of the Trustee has possession of the collateral and that the collateral is, to the knowledge of the Trustee, free and clear of third-party claims, (ii) a master repurchase agreement or specific written repurchase agreement governs the transaction, (iii) the collateral securities are valued no less frequently than monthly, and (iv) the fair market value of the collateral securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%.

and provided further that either (A) title to and/or possession of such securities is transferred to the Trustee in its capacity as Trustee, (B) the securities are held by a third party (not as agent for the bank or broker/dealer) for the benefit of the Trustee and segregated from securities owned generally by such third party or the bank, (C) a perfected security interest under the Uniform

Commercial Code of Virginia or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. in such securities is created for the benefit of the holders of the Bonds, or (D) if the repurchase agreement is with the bank serving as Trustee or related to the trust company serving as Trustee, the third party holding such securities holds them as agent for the Trustee as fiduciary for the holders of the Bonds and not as agent for the bank serving as Trustee or related to the trust company serving as Trustee in its commercial capacity or any other party. Any investment in Government Obligations or in obligations described in (a), (b) and (c) above may be made in the form of an entry made on the records of the issuer of the particular obligation.

**“Letter of Representations”** shall mean the Blanket Letter of Representations dated May 18, 1995, between the Authority and DTC.

**“Loan Agreement”** shall mean the Loan Agreement between the Authority and the University dated the date of this Indenture, including any amendments thereto as permitted in this Indenture.

**“Moody’s”** shall mean Moody’s Investors Service or its successor in the business of providing investment rating services, provided that if neither Moody’s nor any such successor is then in such business the references to Moody’s and ratings thereof shall no longer be requirements of the bond documents.

**“Opinion”** or **“Opinion of Counsel”** shall mean a written opinion of an attorney or firm of attorneys acceptable to the Trustee, who may be counsel for the Authority or the University’s General Counsel.

**“Outstanding”** when used with reference to Bonds shall mean, as of a particular date, all Bonds theretofore issued under this Indenture, except:

- (i) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation.
- (ii) Bonds for the payment of which money, cash or Defeasance Obligations, or a combination of both, sufficient to pay on the date when such Bonds are to be paid or redeemed, the principal of, and the premium, if any, and the interest thereon accruing to such date are held by the Trustee or an escrow agent for the Trustee in trust for the holders of such Bonds, Defeasance Obligations shall be deemed to be sufficient to pay or redeem Bonds on a specified date if the principal of and the interest on such Defeasance Obligations, when due, will be sufficient to pay on such date the principal of and the premium, if any, and interest accruing on, such Bonds to such date.
- (iii) Bonds in exchange for or in lieu of which other Bonds have been issued.

**“Prior Obligations 2019 Account”** shall mean the account in the Prior Obligations Fund created by Section 401.

**“Prior Obligations Fund”** shall mean the Prior Obligations Fund created by Section 401.

**“Record Date”** shall mean the fifteenth (15th) day (whether or not a Business Day) of the month preceding each Interest Payment Date.

**“Refunded Bonds”** shall mean the Series 2013 Bonds maturing on January 1 in the years [20\_\_ through 20\_\_] and the Series 2015A Bonds maturing on January 1 in the years [20\_\_ through 20\_\_ inclusive].

**“S&P”** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or its successor in the business of providing investment rating services, provided that if neither S&P’s nor any such successor is then in such business the references to S&P’s and ratings thereof shall no longer be requirements of the bond documents.

**“Series 2013 Bonds”** shall mean the \$34,960,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2013 issued by the Authority.

**“Series 2015A Bonds”** shall mean the \$32,040,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2015A issued by the Virginia College Building Authority.

**“Series 2019 Project”** shall mean the facilities described as such on Exhibit B to the Loan Agreement.

**“Series 2019 Note”** shall mean the unsecured promissory note of the University in the original principal amount of \$ \_\_\_\_\_, dated December \_\_, 2019, issued to the Authority pursuant to the Loan Agreement in consideration of the loan of the proceeds of the Series 2019 Bonds to the University.

**“Supplemental Indenture”** shall mean any supplemental indenture entered into pursuant to Article XII.

**“Trustee”** shall mean U.S. Bank National Association, or its successors and assigns serving as such under this Indenture.

**“Underwriter”** shall mean, with respect to the Series 2019 Bonds, Wells Fargo Bank, National Association and its respective successors.

**“University”** shall mean The Washington and Lee University, a not-for-profit Virginia nonstock corporation and an institution of collegiate education in the Commonwealth of Virginia, its successors and assigns.

**“Virginia Code”** shall mean the Code of Virginia of 1950, as amended.

**Section 102. Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Bonds shall not be deemed to refer to or connote the payment of Bonds at their stated maturity.

(c) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture unless otherwise indicated.

(d) The headings and Table of Contents in this Indenture are solely for convenience of reference and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(e) All references in this Indenture to the payment of Bonds are references to payment of principal of and premium, if any, and interest on Bonds and all references to the payment of principal of Bonds are references to payment of principal of and applicable premium, if any, on the Bonds.

## ARTICLE II

### AUTHORIZATION, PROCEEDS, DETAILS, EXECUTION, AUTHENTICATION, REGISTRATION AND DELIVERY OF BONDS

**Section 201. Authorization of Series 2019 Bonds.** There are authorized to be issued a series of revenue refunding bonds of the Authority in the aggregate principal amount of \$ \_\_\_\_\_.

**Section 202. Details of Series 2019 Bonds.** The Series 2019 Bonds authorized in Section 201 shall be designated “Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019.” Such Bonds shall be issuable only as registered Bonds in denominations of \$5,000 and multiples thereof, shall be numbered R-1 upward, shall be dated December \_\_, 2019, shall bear interest at the rates, payable on [January][July] 1, 20\_\_, and thereafter semiannually on each January 1 and July 1, until payment, and shall mature on January 1 in years and amounts as follows:

<b><u>Due</u></b> <b><u>(January 1)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>
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Interest on the Bonds shall be calculated on the basis of a year of 360 days and 12 months of 30-days each. All interest determinations and calculations shall be made by the Trustee.

Each Series 2019 Bond shall bear interest at the rate set forth above from December \_\_, 2019 if such Bond is authenticated prior to [January][July] 1, 20\_\_, or (b) otherwise from the January 1 or July 1 that is, or immediately precedes, the date on which such Bond is authenticated, unless payment of interest is in default, in which case such Bond shall bear interest from the date to which interest has been paid.

**Section 203. Delivery of Series 2019 Bonds.** The Trustee shall authenticate and deliver the Series 2019 Bonds when there have been filed with or delivered to it the following:

(a) A certified copy of a resolution or resolutions of the Authority authorizing the execution and delivery of this Indenture, the Loan Agreement and the assignment of the Series 2019 Note and the issuance, sale, execution and delivery of the Series 2019 Bonds.

(b) A certified copy of a resolution or resolutions of the University's Board of Trustees or the Executive Committee of the Board of Trustees authorizing the execution and delivery of the Loan Agreement and the Series 2019 Note and the taking of all action necessary or desirable in connection with the transactions contemplated thereby.

(c) An original executed counterpart of this Indenture.

(d) An original executed counterpart of the Loan Agreement.

(e) The Series 2019 Note duly authorized and executed by the University and assigned to the Trustee.

(f) An Opinion of Counsel that (1) the University is an organization described in Section 501(c)(3) of the Code, and not a private foundation within the meaning of Section 509(a) of the Code, and (2) the Loan Agreement and the Series 2019 Note have been duly authorized, executed and delivered by the University and are enforceable against the University, subject to customary bankruptcy and equitable principles exceptions.

(g) An Opinion of Counsel that the Loan Agreement has been properly executed and delivered by the Authority and is valid and enforceable against the Authority in accordance with its terms, and that the Series 2019 Note has been duly assigned to the Trustee.

(h) An Opinion of Bond Counsel, subject to customary exceptions and qualifications, that the issuance of the Series 2019 Bonds has been duly authorized, that the Series 2019 Bonds are valid and binding limited obligations of the Authority, that the Indenture and the Loan Agreement have been duly authorized, executed and delivered by the Authority.

(i) A request and direction of the Authority, signed by its Chairman or Vice Chairman, to the Trustee to authenticate and deliver the Series 2019 Bonds to such purchaser or purchasers named therein upon payment to the Trustee for the account of the Authority of a specified sum plus accrued interest, if any, to the date of delivery.

(j) Such other documentation as the Authority may reasonably request.

**Section 204. Application of Series 2019 Bond Proceeds.** Simultaneously with the delivery of the Series 2019 Bonds, the Trustee shall deposit, or cause the transfer of, the net proceeds (\$ \_\_\_\_\_) of the Series 2019 Bonds as follows:

(a) \$ \_\_\_\_\_ to the Prior Obligations 2019 Account; and

(b) \$ \_\_\_\_\_ to the Issuance Expense 2019 Account.

**Section 205. Form of Bonds.** The Bonds shall be in substantially the form set forth in Exhibit A with such variations, omissions and insertions as permitted or required by this Indenture.

**Section 206. Payment of Bonds.** Principal of and premium, if any, on Bonds shall be payable to the registered owners upon the surrender of such Bonds at the designated corporate trust office of the Trustee. Interest shall be payable by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Trustee at the close of business on the Record Date preceding such Interest Payment Date; provided, however, that if Bonds are registered in the name of a securities depository or its nominee or at the option of any other registered owner of at least \$1,000,000 principal amount of Bonds, payment will be made by wire transfer pursuant to the most recent wire instructions received by the Trustee from such registered owner by the Record Date for such interest payment. Principal of and premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America, but only from the revenues and receipts derived from payments made under the Note or otherwise pledged to the payment thereof as hereinafter provided.

If any principal of or interest on any Bond is not paid when due (whether at maturity, by acceleration or call for redemption or otherwise), then the overdue installments of principal and, to the extent permitted by law, interest shall bear interest until paid at the same rate set forth in such Bond.

**Section 207. Execution of Bonds.** The Bonds shall be signed by the manual or facsimile signature of the Chairman or Vice Chairman of the Authority and its seal shall be affixed thereto or a facsimile thereof shall be printed thereon and attested by the manual or facsimile signature of its Secretary or Assistant Secretary. If any officer whose signature or a facsimile of whose signature appears on any Bond shall cease to be such officer before the delivery of the Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Any Bond may bear the facsimile signature of or

may be signed by such persons as at the actual time of the execution thereof shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

**Section 208. Authentication of Bonds.** The Bonds shall bear a certificate of authentication, substantially in the form set forth in Exhibit A, and shall not be valid until the Trustee shall have duly executed the certificate of authentication and inserted the date of authentication thereon. The Trustee shall authenticate each Bond with the signature of an authorized person or employee, but it shall not be necessary for the same representative to authenticate all of the Bonds. Only such authenticated Bonds shall be entitled to any right or benefit under this Indenture, and such certificate on any Bond issued under this Indenture shall be conclusive evidence that the Bond has been duly issued and is secured by the provisions of this Indenture.

**Section 209. RESERVED.**

**Section 210. Registration of Transfer and Exchange of Bonds; Persons Treated as Owners.** The Trustee shall act as Bond Registrar and in such capacity shall maintain registration books for the registration or exchange of Bonds. Upon surrender of any Bonds at the designated corporate trust office of the Trustee, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Trustee, such Bond may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of Bonds, in authorized denominations, of the same series, form and maturity, bearing interest at the same rate as the Bonds surrendered for exchange, and registered in the name or names as requested by the then registered owner thereof or his duly authorized attorney or legal representative. The Authority shall execute and the Trustee shall authenticate any Bonds necessary to provide for exchange of Bonds pursuant to this Section.

Prior to due presentment for registration of transfer of any Bond, the Trustee shall treat the registered owner as the person or entity exclusively entitled to (a) payment of principal and premium, if any, and interest and (b) the exercise of all other rights and powers of the owner, except that all interest payments shall be made to the person or entity shown as owner on the registration books of the Trustee, as Bond Registrar, on the 1st day of the month in which occurs an interest payment date.

**Section 211. Charges for Exchange and Registration of Transfer.** Any exchange of or registration of transfer of Bonds shall be at the expense of the University, except that the Trustee, as Bond Registrar, may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

**Section 212. Temporary Bonds.** Prior to the preparation of Bonds in definitive form the Authority may issue temporary Bonds in registered form and in such denominations as the Authority may determine, but otherwise in substantially the form set forth in Exhibit A, with appropriate variations, omissions and insertions. If the Authority initially issues temporary bonds, the Authority promptly shall prepare, execute and deliver to the Trustee, before the first interest payment date, Bonds in definitive form, and thereupon, upon surrender of Bonds in temporary form, the Trustee shall authenticate and deliver in exchange therefor Bonds in definitive form of

the same maturity having an equal aggregate principal amount. Until exchanged for Bonds in definitive form, Bonds in temporary form shall be entitled to the lien and benefit of this Indenture.

**Section 213. Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond has been mutilated, lost, stolen or destroyed, the Authority shall cause to be executed, and the Trustee shall authenticate and deliver to the registered owner thereof, a new Bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost, stolen or destroyed Bond; provided, however, that the Authority and the Trustee shall so execute and deliver only if the holder has paid the reasonable expenses and charges of the Authority and the Trustee in connection therewith and, in the case of a lost, stolen or destroyed Bond, (a) has filed with the Authority and the Trustee evidence satisfactory to them that such Bond was lost, stolen or destroyed and (b) has furnished to the Authority and the Trustee indemnity satisfactory to them. If any such Bond has matured or been called for redemption, instead of issuing a new Bond the Trustee may pay the same without the surrender thereof.

**Section 214. Cancellations and Disposition of Bonds.** All Bonds that have been surrendered for exchange pursuant to Section 210, paid (whether at maturity, by acceleration, call for redemption or otherwise), purchased pursuant to Section 502, or delivered to the Trustee by the Authority for cancellation shall not be reissued, and the Trustee shall, unless otherwise directed by the Authority, retain such Bonds for the period of time as may be required by governmental regulations, and thereafter cremate, shred or otherwise dispose of such Bonds. The Trustee shall deliver to the Authority a certificate of any such cremation, shredding or other disposition.

**Section 215. Book-Entry Only System.** (a) Initially, one bond certificate for each maturity will be issued to DTC, which is designated as the securities depository for the Series 2019 Bonds, or its nominee, and immobilized in its custody or held by the Trustee in its capacity as “FAST” agent for DTC. Beneficial owners of the Series 2019 Bonds will not receive physical delivery of the Series 2019 Bonds. So long as DTC is acting as securities depository for the Series 2019 Bonds, a book-entry system shall be employed, evidencing ownership of the Series 2019 Bonds in principal amounts of \$5,000 or multiples thereof, with transfers of beneficial ownership effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its participants. Interest on the Series 2019 Bonds shall be payable in federal funds to DTC or its nominee as registered owner of the Series 2019 Bonds. Principal, premium, if any, and interest shall be payable by the Trustee in lawful money of the United States of America.

(b) Transfer of principal and interest payments to participants of DTC shall be the responsibility of DTC; transfer of principal and interest payments to beneficial owners by participants of DTC will be the responsibility of such participants and other nominees of beneficial owners. The Authority and the Trustee shall not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants.

(c) In the event that (1) DTC determines not to continue to act as securities depository for the Series 2019 Bonds by giving notice to the Authority and the Trustee discharging its responsibilities under this Indenture, (2) the Trustee or the Authority determines that DTC is incapable of discharging its duties or that continuation with DTC as securities depository is not in the best interest of the Authority, or (3) the Trustee or the Authority determines that continuation

of the book-entry system of evidencing ownership and transfer of ownership of the Series 2019 Bonds is not in the best interest of the Authority or the beneficial owners of the Series 2019 Bonds, the Trustee and the Authority shall discontinue the book-entry system with DTC. If the Trustee or the Authority fails to identify another qualified securities depository to replace DTC, the Trustee shall authenticate and deliver replacement bonds in the form of fully registered certificates to the beneficial owners or to the DTC participants on behalf of beneficial owners, as shown on the records provided by DTC or DTC participants, substantially in the form as set forth above with such variations, omissions or insertions as are necessary or desirable in the delivery of replacement certificates in printed form. The Series 2019 Bonds would then be registrable and exchangeable as set forth in Section 210.

So long as DTC is the securities depository for the Series 2019 Bonds (1) it shall be the registered owner of the Series 2019 Bonds, (2) transfers of ownership and exchanges shall be effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its participants, and (3) references in this Indenture to holders of the Series 2019 Bonds shall mean DTC or its nominee and shall not mean the beneficial owners of the Series 2019 Bonds.

### ARTICLE III

#### REDEMPTION OF BONDS

**Section 301. Redemption Dates and Prices.** (a) The Series 2019 Bonds maturing on or after January 1, 20\_\_ are subject to redemption prior to maturity at the option of the Authority (as directed by an Authorized Representative of the University), in whole or in part (in any integral multiple of \$5,000) at any time on or after January 1, 20\_\_, upon payment of 100% of the principal amount of the Series 2019 Bonds to be redeemed plus interest accrued to the date fixed for redemption.

(b) The Series 2019 Bonds shall also be subject to redemption in whole or in part on any date, at the option of the Authority (as directed by the University), from the proceeds of casualty insurance or condemnation awards, at a redemption price equal to 100% of the principal amount of the Series 2019 Bonds to be redeemed, without premium, plus accrued interest to the redemption date, if all or any part of the University's facilities refinanced with the Series 2019 Bonds is damaged or destroyed or is taken through the exercise of the power of eminent domain and the Authority has delivered to the Trustee a certificate of the University to the effect that the University has determined not to use such proceeds to replace or rebuild the damaged, destroyed or taken property. In the event of a redemption in part pursuant to this paragraph, the University shall redeem the Series 2019 Bonds from each maturity then outstanding, to the extent practicable, in the proportion that the principal amount of the Series 2019 Bonds of such maturity bears to the total principal amount of the Series 2019 Bonds then outstanding.

(c) The Series 2019 Bonds maturing on January 1, 20\_\_, are required to be redeemed prior to maturity in part in accordance with the sinking fund requirements of the Indenture on January 1 in years and amounts, at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date, as follows:

**Year   Amount**

The Series 2019 Bonds maturing on January 1, 20\_\_, are required to be redeemed prior to maturity in part in accordance with the sinking fund requirements of the Indenture on January 1 in years and amounts, at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date, as follows:

**Year   Amount**

The Series 2019 Bonds maturing on January 1, 20\_\_, are required to be redeemed prior to maturity in part in accordance with the sinking fund requirements of the Indenture on January 1 in years and amounts, at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date, as follows:

**Year   Amount**

**Section 302. Selection of Bonds for Redemption.** If less than all of the Bonds are called for redemption, the series and maturities of the Bonds to be redeemed shall be selected by an Authorized Representative of the University. If less than all of a maturity of Bonds is to be redeemed, the Trustee shall select the Bonds to be redeemed by lot in such manner as the Trustee in its discretion may determine, each \$5,000 portion of principal amount being counted as one Bond for this purpose. If a portion of a Bond having a principal amount of more than \$5,000 shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion thereof shall be issued to the registered owner upon the surrender thereof.

If the University exercises any option to prepay the Series 2019 Note under Article VII of the Loan Agreement or requests any redemption of Bonds permitted under this Indenture and sufficient amounts are in the funds created in this Indenture, the Trustee shall, in the name of the

Authority, redeem Bonds as then permitted or required at the earliest practicable date permitted under this Indenture.

**Section 303. Notice of Redemption.** (a) If less than all Bonds of a series are to be redeemed, and subject to subsection (b) of this Section, the Bonds to be redeemed shall be identified by reference to the series designation, date of issue, serial numbers and maturity date. Each notice of redemption shall specify: (1) the date fixed for redemption, (2) the principal amount of Bonds or portions thereof to be redeemed, (3) the applicable redemption price, (4) the place or places of payment, including the address and a contact person and telephone number, upon presentation and surrender of the Bonds, (5) that payment of the principal amount and premium, if any, will be made upon presentation and surrender of the Bonds to be redeemed, unless provided otherwise in an applicable Supplemental Indenture, (6) that interest accrued to the date fixed for redemption will be paid as specified in such notice, (7) that on and after such date interest on Bonds which have been redeemed will cease to accrue, (8) the certificate and CUSIP numbers of the Bonds to be redeemed and if less than the face amount of any such Bond is to be redeemed, the principal amount to be redeemed, (9) the issuance and maturity dates and interest rates of the Bonds to be redeemed, and (10) any conditions to the redemption of the Bonds as may be described in the notice of redemption, which conditions and conditional notices are hereby specifically authorized. Notice of redemption of any Bonds shall be mailed at the times and in the manner set forth in subsection (b) of this Section.

(b) Except as provided otherwise in an applicable Supplemental Indenture, any notice of redemption shall be sent by the Trustee not less than 30 nor more than 60 days prior to the date set for redemption (1) by first class, registered or certified mail to the holder of each such Bond to be redeemed in whole or in part at its address as it appears on the registration books maintained by the Trustee, (2) by registered, certified or overnight mail, or by telecopy, to all organizations registered with the Securities and Exchange Commission as securities depositories, and (3) to at least one information service of national recognition which disseminates redemption information with respect to tax-exempt securities. In preparing and delivering such notice, the Trustee shall take into account, to the extent applicable, the prevailing tax-exempt securities industry standards. Failure to give any notice specified in (1) of this subsection, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds with respect to which no such failure or defect has occurred. Failure to give any notice specified in (2) or (3) of this subsection, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds with respect to which the notice specified in (1) of this subsection is given correctly.

(c) On or before the date fixed for redemption, funds shall be deposited with the Trustee to pay the principal of and premium, if any, and interest accrued thereon to the redemption date on the Bonds called for redemption. Upon the happening of the above conditions, the Bonds thus called for redemption shall cease to bear interest from and after the redemption date, shall no longer be entitled to the benefits provided by this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

## ARTICLE IV

### FUNDS AND ACCOUNTS

**Section 401. Creation of Prior Obligation Fund.** There is created and established with the Trustee a trust fund to be designated the “Industrial Development Authority of the City of Lexington, Virginia Prior Obligations Fund: Washington and Lee University.”

**Section 402. Prior Obligations.** There is hereby created and ordered established within the Prior Obligations Fund created by Section 401 an account to be designated the “Prior Obligations 2019 Account,” separate and apart from all other moneys in such Fund. [Moneys in the Prior Obligations 2019 Account shall be used by the Trustee to provide for the defeasance and redemption of the Refunded Bonds in accordance with the Escrow Agreement among U.S. Bank National Association, as escrow agent, the Authority and the University.]

**Section 403. Issuance Expenses.** There is hereby created and ordered established within the Prior Obligations Fund created by Section 401, an account to be designated the “Issuance Expense 2019 Account,” separate and apart from all other moneys in such Fund. Moneys in the Issuance Expense Account shall be used by the Trustee for the payment of Issuance Expenses, but only to the extent of the amount deposited in the Issuance Expense Account ; provided, however, that any amounts remaining on deposit in the Issuance Expense Account after 180 days from the issuance of the Bonds shall be transferred to the Bond Fund, as directed by an Authorized Representative of the University.

“**Issuance Expenses**” with respect to the Bonds may include, without limitation, the following:

(a) Legal fees and expenses incurred in connection with the issuance and sale of such series of Bonds, including fees and expenses of Bond Counsel, counsel to the bond underwriter, counsel to the University, counsel to the Trustee and counsel to the Authority;

(b) Financial advisor, verification agent, underwriting fees or placement fees incurred in connection with the issuance and sale of such series of Bonds;

(c) Expenses incurred in connection with obtaining a rating for such series of Bonds, including any travel expenses and fees or premiums in connection with obtaining any credit enhancement;

(d) Trustee fees incurred in connection with the issuance and sale of such series of Bonds;

(e) Accounting and any verification agent fees incurred in connection with the issuance and sale of such series of Bonds; and

(f) Printing costs, including expenses incurred in connection with printing such series of Bonds, the preliminary and final official statements or other offering documents with respect to such series of Bonds.

**Section 404. Payments from Prior Obligation Fund.** The Trustee shall use moneys in the Prior Obligations 2019 Account solely to defease and redeem the Refunded Bonds and shall pay Issuance Expenses only with amounts in the Issuance Expenses 2019 Account. Before any



payment shall be made from the Issuance Expenses 2019 Account, there shall be filed with the Trustee:

(a) A requisition, substantially in the form of Exhibit B to this Indenture, signed by an Authorized Representative of the University, stating:

- (1) the name of the person, firm or corporation to whom the payment is due;
- (2) the amount to be paid; and
- (3) the purpose in reasonable detail for which the obligation to be paid was incurred.

Upon receipt of each such requisition and accompanying certificate the Trustee shall within two business days make payment from the Prior Obligations Fund in accordance with such requisition[; provided, however, that if such certificate states any Event of Default exists under the Loan Agreement, the Trustee shall not be required to make such payment absent written direction from the holders of a majority in aggregate principal amount of Bonds then Outstanding]. All such payments shall be made by check or draft payable either (i) directly to the person, firm or corporation to be paid, (ii) to both the University and such person, firm or corporation, or (iii) upon receipt of evidence that the University has previously paid such amount, to the University.

**Section 405. Disposition of Balance in Prior Obligation Fund.** Any moneys remaining in the Prior Obligations 2019 Account, after the defeasance and redemption of the Refunded Bonds, shall, at the direction of an Authorized Representative of the University, shall be transferred to the Bond Fund.

## ARTICLE V

### REVENUES AND FUNDS

**Section 501. Creation of Bond Fund.** There is hereby created and ordered established with the Trustee a trust fund to be designated the “Industrial Development Authority of the City of Lexington, Virginia Bond Fund: Washington and Lee University.” Any amount received by the Authority as accrued interest on the Series 2019 Bonds from their date to the date of their delivery shall be deposited in the Bond Fund as provided in Section 204. There also shall be deposited in the Bond Fund, as and when received, (a) all payments on the Series 2019 Note and (b) all other moneys with respect to the Bonds received by the Trustee under and pursuant to any of the provisions of the Loan Agreement or this Indenture that are required to be paid in the Bond Fund. So long as any of the Bonds are Outstanding, the Authority shall deposit, or cause to be deposited, promptly in the Bond Fund sufficient moneys from receipts derived by it from the Loan Agreement and the Series 2019 Note to pay the principal of and premium, if any, and interest on the Bonds as the same become due and payable. Nothing in this Indenture shall be construed as requiring the Authority to use any funds or receipts from any source other than funds and receipts derived from the Loan Agreement and the Series 2019 Note for such purpose.

**Section 502. Use of Moneys in Bond Fund.** Moneys in the Bond Fund shall be used solely for the payment of the interest on the Bonds and for the payment of the principal of and

premium, if any, on the Bonds, whether at maturity, by acceleration, call for redemption or otherwise.

The Trustee shall provide for sinking fund redemption of Bonds in accordance with Sections 301(c) and 303; provided, however, that on or before the 70th day next preceding any such sinking fund payment date the Authority, or the University on behalf of the Authority, may:

(a) pay to the Trustee for deposit in the Bond Fund, as an advance payment on the Series 2019 Note, such amount as the University may determine, accompanied by a certificate signed by an Authorized Representative of the University directing the Trustee to apply amounts on deposit in the Bond Fund to the purchase of Bonds required to be redeemed on such sinking fund payment date, and the Trustee shall thereupon use all reasonable efforts to expend such amount as nearly as may be practicable in the purchase of such Bonds at a price not exceeding the principal amount thereof plus accrued interest to such sinking fund redemption date; or

(b) deliver to the Trustee for cancellation Bonds required to be redeemed on such sinking fund payment date in any aggregate principal amount desired; or

(c) instruct the Trustee to apply a credit against the Authority's sinking fund redemption obligation for any such Bonds that previously have been redeemed (other than through the operation of the sinking fund) and canceled by the Trustee but not theretofore applied as a credit against any sinking fund redemption obligation.

Upon the occurrence of any of the events described in subsection (a), (b) or (c) of this Section, the Trustee shall credit against the Authority's sinking fund redemption obligation on the next sinking fund payment date the amount of such Bonds so purchased, delivered or previously redeemed. Any principal amount of such Bonds in excess of the principal amount required to be redeemed on such sinking fund payment date shall similarly reduce the principal amount of the Bonds to be redeemed on the next sinking fund payment date. On the date notice of such sinking fund redemption is given pursuant to Section 303, any amounts remaining in the Bond Fund in excess of the amount required to fulfill the remaining required sinking fund redemption obligation on such sinking fund payment date shall be used to redeem Bonds at the earliest date permitted pursuant to Section 301, and if such date shall be more than 13 months after the date of deposit of such amounts, such amounts shall be invested only at the written direction of the University and in accordance with the advice of Bond Counsel.

**Section 503. Non-Presentation of Bonds.** (a) If any Bond is not presented for payment when the principal thereof becomes due (whether at maturity, upon acceleration, call for redemption or otherwise), all liability of the Authority to the holder thereof for the payment of such Bond shall be completely discharged if funds sufficient to pay such Bond and the interest due thereon shall be held by the Trustee for the benefit of such holder. It shall thereafter be the duty of the Trustee to hold such funds subject to subsection (b) below, without liability for interest thereon, for the benefit of such holder, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond.

(b) Notwithstanding any provision of this Indenture to the contrary, amounts held by the Trustee for the payment of principal of and premium, if any, or interest on any Bonds left unclaimed for five years after the date for final payment of such Bonds (whether at maturity, acceleration, call for redemption or otherwise) shall be disposed of by the Trustee in accordance with Virginia Code Section 55-210.12 or any successor provision of law. Holders of such Bonds shall thereafter be entitled to look only to their remedies under Chapter 11.1, Title 55, of the Virginia Code or successor provision, and all liability of the Authority and the Trustee with respect to such amounts shall cease.

**Section 504. Trustee's and Authority's Fees, Costs and Expenses.** All reasonable fees and expenses of the Trustee and reasonable costs and expenses of the Authority directly related to the refinancing of the Series 2019 Project are, to the extent not paid from the Issuance Expense 2019 Account, to be paid by the University under Section 4.1(b) of the Loan Agreement.

**Section 505. Moneys to be held in Trust.** All moneys required to be deposited with or paid to the Trustee for the account of any of the funds created by this Indenture shall be held by the Trustee in trust and, except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, shall, while held by the Trustee, constitute part of the trust estate and be subject to the lien of this Indenture.

**Section 506. Disposition of Balance in Bond Fund.** After payment in full of the Bonds or provision for payment thereof pursuant to Section 901, and after payment of the fees and expenses of the Trustee and other amounts required to be paid under this Indenture and the costs, fees, and expenses of the Authority and any other amounts required to be paid by the University under the Series 2019 Note, or the Loan Agreement, including amounts to be paid pursuant to Section 4.6 of the Loan Agreement, all amounts remaining in the Bond Fund in excess of the amounts used as described in Section 901 shall be paid to the University.

**Section 507. Accounts within Funds.** The Trustee shall, at the direction of the University, create accounts within any fund established by this Indenture and shall deposit amounts transferred to such fund in accounts therein as directed by an Authorized Representative of the University. In making transfers from any such fund, the Trustee shall draw on accounts therein as directed by an Authorized Representative of the University so long as required transfers can be made consistent with such directions. Notwithstanding the name of such accounts, all accounts shall be pledged equally and ratably to the Bonds.

## ARTICLE VI

### GENERAL COVENANTS AND PROVISIONS

**Section 601. Payment of Bonds.** The Authority shall promptly pay when due, or cause to be paid, the principal of, whether at maturity, by acceleration, call for redemption or otherwise, and premium, if any, and interest on the Bonds, to the Trustee for payment to the registered owners of the Bonds on the dates and in the manner provided in this Indenture and in the Bonds; provided, however, that such obligations are not general obligations of the Authority but are limited obligations payable solely from the revenues and receipts derived from and under the Loan Agreement and the Series 2019 Note, which receipts are hereby pledged and assigned specifically

to such purposes in the manner and to the extent provided in this Indenture. The Bonds, the premium, if any, and interest thereon shall not be a debt or a pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City of Lexington. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the City of Lexington, shall be liable on the Bonds or obligated to pay the principal of or the premium, if any, or the interest thereon or other costs incident thereto except from the revenues and receipts pledged therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City of Lexington, is pledged to the payment of the principal of or the premium, if any, or the interest on the Bonds or other costs incident thereto.

**Section 602. Covenants and Representations of Authority.** The Authority shall observe and perform all covenants, conditions and agreements on its part contained in this Indenture, in every Bond executed, authenticated and delivered under this Indenture and in all proceedings of its board of directors pertaining thereto; provided, however, that the liability of the Authority under any such covenant, condition or agreement for any breach or default by the Authority thereof or thereunder shall be limited solely to the revenues and receipts derived from and under the Loan Agreement and the Series 2019 Note. The Authority represents that it is duly authorized under the Constitution and laws of the Commonwealth of Virginia, including particularly and without limitation the Act, to issue the Bonds and to execute this Indenture, to assign the Loan Agreement and the Series 2019 Note, and to pledge the revenues and receipts in the manner and to the extent set forth in this Indenture; that all action on its part with respect to the issuance of the Bonds and the execution and delivery of this Indenture duly and effectively has been taken; and that the Bonds in the possession of the owners thereof are and will be valid and enforceable limited obligations of the Authority according to the terms thereof except as limited by bankruptcy laws and other laws affecting creditors' rights generally and by usual equity principles.

**Section 603. Further Assurances.** The Authority shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental to this Indenture and such further acts, instruments and transfers as the Trustee may reasonably require to better assure, transfer, convey, pledge and assign to the Trustee all the rights assigned hereby and the revenues and receipts pledged hereby to the payment of the principal of and premium, if any, and interest on the Bonds. The Authority shall cooperate with the Trustee and the holders in protecting the rights and security of the holders.

**Section 604. Inspection of Books.** All books and accounts in the possession of the Authority relating to the Loan Agreement, the Series 2019 Note, the revenues and receipts derived therefrom and the security therefor, or the University and any and all transactions contemplated by this Indenture shall during normal business hours upon reasonable notice be open to inspection by the Trustee, the University, the holders of 25% in aggregate principal amount of Bonds then Outstanding and their respective accountants and agents as the foregoing parties may from time to time designate.

**Section 605. Rights under Loan Agreement and Series 2019 Note.** The Authority grants to the Trustee the right to enforce, in its name or in the name of the Authority, for and on behalf of the Bondholders, regardless of whether the Authority is in default under this Indenture,

all rights of the Authority and all obligations of the University under and pursuant to the Loan Agreement and the Series 2019 Note except for rights of the Authority not assigned to the Trustee.

**Section 606. RESERVED.**

**Section 607. Reports by Trustee.** The Trustee shall make annual reports to the Authority (but only as and if requested) and the University of all moneys received and expended by it.

**ARTICLE VII**

**RESERVED**

**ARTICLE VIII**

**SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS**

**Section 801. Investment of Funds.** Money held for the credit of funds and accounts created under this Indenture shall be continuously invested and reinvested by the Trustee, as directed in writing or orally and promptly confirmed in writing by the Authorized Representative of the University, in Investment Obligations to the extent practicable. No sale or disposition of any obligation in which funds are held under this Indenture shall be required prior to the maturity or repurchase date thereof because (a) such obligation has ceased to be an Investment Obligation due to failure of such obligation or the obligor thereunder to continue to be rated by S&P or Moody's in the investment grade required in the definition of "Investment Obligation," or (b) after the acquisition thereof such obligation has been rated by S&P or Moody's in a lower investment grade than required in the definition of "Investment Obligations." Any such Investment Obligations shall mature not later than the respective dates when the money held for the credit of such funds or accounts will be required for the purposes intended.

Moneys held in the following Funds shall be invested in obligations described in this Section of the following maturities:

- (1) Prior Obligations Fund - not later than the dates on which such moneys will be needed to defease and redeem the Refunded Bonds and pay Issuance Expenses; and
- (2) Bond Fund - not later than the dates on which such moneys will be needed to pay principal of and premium, if any, or interest on Bonds.

No Investment Obligations in any fund or account may mature beyond the latest maturity date of any Bonds Outstanding at the time such Investment Obligations are deposited. For the purposes of this section, the maturity date of repurchase agreements for Government Obligations or other obligations is the maturity date of such repurchase agreements and not the maturity date of the underlying Government Obligation or other obligation.

The Authorized Representative of the University may, at any time, give to the Trustee directions in writing or orally and promptly confirmed in writing respecting the investment of any money required to be invested under this Indenture, subject, however, to the provisions of this

Article, and the Trustee shall then invest such money under this Section as so directed by the Authorized Representative of the University. The Trustee may request, in writing, direction or authorization of the Authorized Representative of the University with respect to the proposed investment of money under the provisions of this Indenture pursuant to Section 5.12 of the Loan Agreement and, upon receipt of such directions, the Trustee shall, subject to the provisions of this Article, invest such money in accordance with such directions.

Investment Obligations acquired with money and credited to any fund or account established under this Indenture shall be held by or under the control of the Trustee and while so held shall be deemed at all times to be part of such fund or account in which such money was originally held and, except as otherwise provided in Articles IV or V of this Indenture, the interest accruing thereon and any profit or loss realized upon the disposition or maturity of such investment shall be credited to or charged against such fund or account. The Trustee shall sell or reduce to cash a sufficient amount of such Investment Obligations whenever it shall be necessary so to do in order to provide moneys to make any payment or transfer of moneys from any such fund or account. The Trustee shall not be liable or responsible for any loss resulting from any such investment.

Whenever a payment or transfer of money between two or more of the funds or accounts established pursuant to Articles IV or V of this Indenture is permitted or required, such payment or transfer may be made in whole or in part by the transfer of one or more Investment Obligations at a value determined in accordance with this Article VIII, provided that the Investment Obligations transferred are those in which moneys of the receiving fund or account could be invested at the date of such transfer.

**Section 802. Valuation.** For the purpose of determining the amount on deposit in any fund or account Investment Obligations shall be valued (a) at face value if such Investment Obligations mature within six months from the date of valuation thereof, and (b) if such Investment Obligations mature more than six months after the date of valuation thereof, at the price at which such Investment Obligations are redeemable by the holder at his option if so redeemable, or, if not so redeemable, at the market value of such obligations.

The Trustee shall value the Investment Obligations in the funds and accounts established under this Indenture at any time requested in writing by an Authorized Representative of the University on reasonable notice to the Trustee (which period of notice may be waived or reduced by the Trustee), provided, however, that the Trustee shall not be required to value the Investment Obligations more than once in any calendar quarter.

**Section 803. Security for Deposits.** All moneys in the funds created by this Indenture which are on deposit with any bank or trust company in Virginia shall be continuously secured in the manner required by the Virginia Security for Public Deposits Act, Chapter 44, Title 2.2 of the Virginia Code or any successor provision of law.

**Section 804. Investments through Trustee's Bond Department.** The Trustee may make investments permitted by Section 801 through its own bond department or the bond department of any affiliated entity.

## ARTICLE IX

### DISCHARGE OF INDENTURE

**Section 901. Discharge of Indenture; Payment of Bonds.** (a) If (1) all Bonds shall have become due and payable in accordance with their terms or otherwise as provided in this Indenture or have been duly called for redemption or irrevocable instructions to call the Bonds or pay them at maturity have been given by the Authority to the Trustee, (2) the Trustee holds cash or Defeasance Obligations registered in the name of the Trustee the interest on which and principal at maturity will be sufficient, as verified by an independent certified public accountant or other consultant reasonably acceptable to the Trustee, (A) to redeem in accordance with the relevant section of this Indenture and in any Supplemental Indenture all Bonds that have been called for redemption on the date set for such redemption, (B) to pay at maturity all Bonds not irrevocably called for redemption, and (C) to pay interest accruing on all Bonds prior to their redemption or payment at maturity, and (3) arrangements, satisfactory to the Trustee, have been made to pay to the Trustee its reasonable fees and expenses and any other fees and expenses for which the University is responsible under the Loan Agreement, including any payments to the United States of America required by this Indenture or any Supplemental Indenture and the costs and expenses of canceling and discharging this Indenture, then except as hereinafter provided, this Indenture shall cease to be of further effect and the Trustee shall on demand and at the expense of the University execute and deliver to the Authority such instruments in writing acknowledging the satisfaction of this Indenture and as shall be requisite to cancel any liens securing this Indenture, and assign and deliver any property at the time subject to this Indenture that may then be in its possession, except (i) amounts in funds created by this Indenture required to be paid to the University under Section 506 and (ii) funds or securities in which such funds are invested that are held by the Trustee for the payment of the Bonds and other fees and expenses described in clause (3) above.

(b) Notwithstanding the cancellation and discharge of this Indenture and the lien thereof as provided in this Article, (1) the Trustee shall nevertheless retain such rights, powers and duties under this Indenture as may be necessary and convenient for the payment of amounts due or to become due on the Bonds and the registration, transfer, exchange and replacement of Bonds as provided in this Indenture and (2) upon proceeding under bankruptcy laws, or otherwise as described in Section 6.1(c), (d) or (e) of the Loan Agreement the trust created under this Indenture shall be reactivated and the Trustee shall have an obligation to enforce and receive the payments required to be provided by the Loan Agreement, all in accordance with and subject to the provisions of this Indenture, including Sections 1101(k) and 1102, except only those provisions pertaining to the liens granted by the granting clause of this Indenture.

(c) Bonds for the payment or redemption of which cash or Defeasance Obligations, the principal of and premium, if any, and interest on which will be sufficient therefor, as determined by the Trustee in reliance on a report of an independent certified public accountant or other consultant reasonably acceptable to the Trustee, shall have been deposited with the Trustee (whether upon or prior to the date of their maturity or their redemption date) shall be deemed to be paid and no longer Outstanding; provided, however, that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or arrangements satisfactory to the Trustee shall have been made for the giving thereof.

## ARTICLE X

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

**Section 1001. Events of Default.** Each of the following shall be an Event of Default:

- (a) Default in the due and punctual payment of any interest on any Bond;
- (b) Default in the due and punctual payment of the principal of any Bond (whether at maturity, by acceleration, call for redemption or otherwise);
- (c) Subject to the provisions of Section 1011, default in the observance or performance of any other covenant, condition or agreement on the part of the Authority under this Indenture or the Bonds; or
- (d) An “Event of Default” under the Loan Agreement.

**Section 1002. Acceleration.** Upon the occurrence and continuation of an Event of Default the Trustee may and, if requested by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice to the Authority, declare the entire unpaid principal of and premium, if any, and interest on Bonds due and payable and, thereupon, the entire unpaid principal of and premium, if any, and interest on the Bonds shall forthwith become due and payable. Upon any declaration set forth in this Section the Authority will forthwith pay or cause to be paid to the holders of Bonds the entire unpaid principal of and accrued interest on such Bonds, but only from the payments, receipts and proceeds specifically pledged in this Indenture for such purpose.

**Section 1003. Other Remedies; Rights of Bondholders.** Upon the occurrence and continuation of an Event of Default the Trustee may, but shall be under no obligation to, proceed to protect and enforce its rights and the rights of the Bondholders by mandamus or other suit, action or proceeding at law or in equity, including an action for specific performance of any agreement contained in this Indenture.

Upon the occurrence and continuation of an Event of Default, if requested to do so by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding and if arrangements satisfactory to it have been made for the payment or reimbursement of expenses as provided in Section 1101(k), the Trustee shall exercise such one or more of the rights and powers conferred by this Article as shall have been so requested of the Trustee.

No remedy conferred by this Indenture upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders under this Indenture or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such



default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default under this Indenture, whether by the Trustee pursuant to Section 1010 or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

**Section 1004. Right of Bondholders To Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, the owners of a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture; provided, however, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**Section 1005. Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys, the expenses, liabilities and advances incurred or made by the Trustee and its fees and expenses and the expenses of the Authority in carrying out this Indenture, the Loan Agreement and the Note, be deposited in the Bond Fund and applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First--To the payment to the persons or entities entitled thereto of all installments of interest then due on the Bonds, including to the extent permitted by law interest on overdue installments of interest, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons or entities entitled thereto, without any discrimination or preference except as to any difference in respective rates of interest specified in the Bonds; and

Second--To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds that shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds at the respective rates specified therein from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then first to the payment of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal and premium, if any, ratably, according to the amount of such principal and premium, if any, due on such date, to the persons or entities entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons or entities entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then subject to the provision of subsection (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee may be directed in writing by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding or, if no such direction is provided as the Trustee shall determine. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

**Section 1006. Remedies Vested in Trustee.** All rights of action (including without limitation the right to file proof of claims, which right is hereby expressly granted) under this Indenture, the Loan Agreement, the Series 2019 Note or any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding or proof of claim instituted or filed by the Trustee shall be brought or filed in its name as Trustee without the necessity of joining as plaintiffs or defendants any Bondholders, and any recovery of judgment shall be for the equal benefit of the owners of the Outstanding Bonds, subject to the provisions of Section 1005.

**Section 1007. Limitations on Suits.** Except to enforce the rights given under Sections 1002 and 1008, no holder of any Bond shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy under this Indenture, unless (a) a default has occurred and is continuing of which the Trustee has been notified as provided in Section 1101(h) or of which by such Section it is deemed to have notice, (b) such default has become an Event of Default and the holders of at least 25% in aggregate principal amount of Bonds then Outstanding have made request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (c) they have offered to make arrangements for the payment or reimbursement of expenses as provided in Section 1101(k), (d) the Trustee has for 30 days after such notice failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his or their own name or names, (e) no direction inconsistent with such written request has been given to the Trustee during such 30 day period by the holders of a majority in aggregate principal amount of

Bonds then Outstanding, and (f) notice of such action, suit or proceeding is given to the Trustee; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right under this Indenture except in the manner provided in this Indenture, and that all proceedings at law or in equity shall be instituted and maintained in the manner provided in this Indenture and for the equal benefit of the holders of all Bonds. The notification, request and offer of arrangements for the payment or reimbursement of expenses set forth above, at the option of the Trustee, shall be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture or for any other remedy under this Indenture.

**Section 1008. Unconditional Right To Receive Principal and Premium, if any, and Interest.** Nothing in this Indenture shall, however, affect or impair the right of any Bondholder to enforce, by action at law, payment of any Bond at and after the maturity thereof, or on the date fixed for redemption or (subject to Section 1002) upon the same being declared due prior to maturity as provided in this Indenture, or the obligation of the Authority to pay the principal of and premium, if any, and interest on each Bond issued under this Indenture to the respective holders thereof at the time, place, from the source and in the manner expressed in this Indenture and in the Bonds.

**Section 1009. Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case the Authority and the Trustee shall be restored to their former positions and rights under this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 1010. Waivers of Events of Default.** The Trustee may, based solely on an Opinion of Counsel, waive any Event of Default under this Indenture and its consequences and rescind any declaration of acceleration of principal of and interest on the Bonds, and shall do so upon the written request of the holders of (a) a majority in aggregate principal amount of the Bonds in respect to which default in the payment of principal and/or premium, if any, and/or interest exists, or (b) a majority in aggregate principal amount of Bonds then Outstanding in the case of any other default; provided, however, that

(1) there shall not be waived without the consent of the holders of all Bonds then Outstanding (A) any default in the payment when due of the principal of Bonds, or (B) any default in the payment when due of the interest on any such Bonds unless, prior to such waiver or rescission,

(i) there shall have been paid or provided for all arrears of interest, all arrears of principal and premium, if any, and all expenses of the Trustee in connection with such default, and

(ii) in case of any such waiver or rescission or in case of any discontinuance, abandonment or adverse determination of any proceeding taken by the Trustee on account of any such default, the Authority, the Trustee and the

Bondholders shall be restored to their former positions and rights under this Indenture respectively, and

(2) no declaration of maturity under Section 1102 made at the request of the holders of at least 25% in aggregate principal amount of Bonds then Outstanding shall be rescinded unless requested by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding.

No such waiver or rescission shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 1011. Notice of Defaults; Opportunity to Cure Defaults.** The Trustee shall notify the Authority as promptly as practicable of the occurrence of any default specified in Section 1001(a) or (b). Anything in this Indenture to the contrary notwithstanding, no default specified in Section 1001(c) on the part of the Authority shall constitute an Event of Default until (a) notice of such default shall be given (1) by the Trustee to the Authority and the University or (2) by the holders of at least 25% in aggregate principal amount of the Bonds then Outstanding to the Trustee, the Authority and the University, and (b) the Authority and the University shall have had 60 days after such notice to correct such default or cause such default to be corrected, and shall not have corrected such default or caused such default to be corrected within such period; provided, however, if any default specified in Section 1001(c) shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Authority or the University within such period and diligently pursued until such default is corrected.

With regard to any alleged default concerning which notice is given to the University under this section, the University may perform any covenant, condition or agreement, the nonperformance of which is alleged in such notice to constitute a default, in the name and stead of the Authority, with full power to do any and all things and acts to the same extent that the Authority could do and perform any such things and acts and with power of substitution.

## ARTICLE XI

### THE TRUSTEE

**Section 1101. Acceptance of Trusts.** The Trustee hereby accepts the trusts and obligations imposed upon it by the Indenture, the Loan Agreement and the Series 2019 Note, and agrees to perform such trusts and obligations, but only upon and subject to the following express terms and conditions and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and the Loan Agreement and as a corporate trustee ordinarily would perform such duties under a corporate indenture. Upon the occurrence and continuation of an Event of Default (which has not been waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and

skill in its exercise as a corporate trustee under a corporate indenture ordinarily would exercise or use in the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers of this Indenture and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to act upon the opinion or advice of its counsel concerning all matters of trust of this Indenture and the duties under this Indenture, and may in all cases be reimbursed under this Indenture for reasonable compensation paid to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trust of this Indenture. The protection provided to the Trustee under this Indenture shall extend to its directors, officers, agents and employees. The Trustee may act upon an Opinion of Counsel and shall not be responsible for any loss or damage resulting from any action or non-action by it taken or omitted to be taken in good faith and in reliance upon such Opinion of Counsel.

(c) The Trustee shall not be responsible for any recital in this Indenture or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for the validity of the execution by the Authority of this Indenture or of any supplements to this Indenture or instruments of further assurance, or for the sufficiency of the security for the Bonds issued under this Indenture or intended to be secured by this Indenture, and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority or on the part of the University, except as hereinafter set forth. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment made by it in accordance with Article VIII.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered under this Indenture. The bank or trust company acting as Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in the Bonds and may join in any action that any Bondholder may be entitled to take with like effect as if such bank or trust company were not, or such director(s), officer(s), employee(s) or agent(s) were not affiliated with, the Trustee. To the extent permitted by law, such bank or trust company also may receive tenders and purchase in good faith Bonds from itself, including any department, affiliate or subsidiary, with like effect as if it were not the Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, requisition, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bonds shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed (i) by an Authorized Representative of the Authority or such other person or persons as may be designated for such purposes by resolution of the Authority, or (ii) by an Authorized Representative of the University or by such other person or persons as may be designated for such

purposes by resolution of the University's Board of Trustees, as sufficient evidence of the facts therein contained. Prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by such subsection it is deemed to have notice, the Trustee may also accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Secretary or Assistant Secretary of the Authority or the University under its respective seal to the effect that a resolution in the form therein set forth or attached to the certificate has been adopted by the Board of Directors of the Authority or the Board of Trustees of the University, as the case may be, as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default under this Indenture, except failure by the Authority to cause to be made any of the payments to the Trustee required to be made by Section 206, the occurrence of an Event of Default under Section 1001(a) or (b), failure by the University to make any payments under the Series 2019 Note or failure by the Authority or the University to file with the Trustee any document required by this Indenture or the Loan Agreement to be so filed, unless the Trustee shall be notified, in writing, of such default by the Authority or by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding.

(i) The Trustee shall not be required to give any bond or surety in respect of the execution of such trusts and powers or otherwise in respect of its rights and obligations under this Indenture.

(j) Notwithstanding anything elsewhere contained in this Indenture, the Trustee shall have the right, but shall not be required, to demand, as a condition of any action by the Trustee in respect of the authentication of any Bonds, the withdrawal of any moneys or any action whatsoever within the purview of this Indenture, such showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that required by the terms of this Indenture, as it may deem necessary or appropriate, in reliance on such advice or Opinion(s) of Counsel as it may determine to be prudent.

(k) Before taking any action under this Indenture the Trustee may require that satisfactory indemnity be furnished to it for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability by reason of any action so taken, except liability that results from its negligence or willful default. No provision of this Indenture requires the Trustee to expend its own funds or otherwise incur any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(l) All moneys received by the Trustee shall, until used or applied or invested as provided in this Indenture, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or law. The Trustee shall not be under any liability for interest on any moneys received under this Indenture except such as may be agreed upon.

(m) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising or caused, directly or indirectly by circumstances beyond its reasonable control including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; pandemic; riots; interruptions; loss or malfunctions of utilities, communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under any such circumstances.

(n) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture, the Loan Agreement or any other document reasonably related to the Bonds, sent by the Authority or the University by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that the Authority and the University, respectively, shall provide the Trustee with an incumbency certificate listing Authorized Representatives of the Authority or Authorized Representatives of the University, respectively, with the authority to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from such listing. If the Authority or the University elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method), and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance on and compliance with such instructions, notwithstanding that such instructions may conflict with or be inconsistent with a subsequent written instruction. The Authority and the University each agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and potential misuse of such communications by third parties.

**Section 1102. Fees, Charges and Expenses of Trustee.** The Trustee shall be entitled to payment and reimbursement for such fees, charges and expenses as specifically may be agreed upon with the University and, absent such agreement, for reasonable fees for services rendered under this Indenture and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services rendered under this Indenture. Upon an Event of Default, Trustee shall have a first lien, with right of payment prior to payment on account of principal of or premium, if any, or interest on any Bond, upon the trust estate for the foregoing fees, charges and expenses incurred by Trustee. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default under this Indenture caused by the occurrence of an "Event of Default" specified in Section 6.1(d), (e) or (f) of the Loan Agreement, the expenses and the compensation for the services are intended to constitute expenses of

administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 1103. Notice Required of Trustee.** If the University shall fail to make any payment under any Note on the day such payment is due and payable, the Trustee shall give notice thereof by telephone or telecopy to the University and to the Authority promptly after the Trustee becomes aware of any such failure. In the event of (a) failure by the Authority to cause any of the payments to be made to the Trustee as required by Section 206 or (b) notification to the Trustee by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding of any Event of Default under this Indenture, then the Trustee shall give notice thereof to each registered owner of Bonds.

**Section 1104. Intervention by Trustee.** In any judicial proceeding to which the Authority or the University is a party and that, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondholders, the Trustee may intervene on behalf of the Bondholders and, subject to Section 1101(k), shall do so if requested by the holders of at least 25% in aggregate principal amount of Bonds then Outstanding.

**Section 1105. Merger or Consolidation of Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall be and become successor Trustee under this Indenture and vested with all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties to this Indenture, anything in this Indenture to the contrary notwithstanding.

**Section 1106. Resignation of Trustee.** The Trustee may at any time resign from the trusts hereby created by giving 60 days' notice to the Authority, the University and each owner of Bonds then Outstanding. Such resignation shall take effect upon the appointment of a successor or temporary Trustee by the Bondholders, the Authority or a court of competent jurisdiction.

**Section 1107. Removal of Trustee.** The Trustee may be removed at any time by (a) an instrument or concurrent instruments in writing delivered to the Trustee and to the Authority and signed by the holders of a majority in aggregate principal amount of Bonds then Outstanding, or (b) by the Authority at the direction of the University by notice in writing delivered to the Trustee sixty days before the removal date; provided, however, that the Authority shall have no right to remove the Trustee during any time when an Event of Default has occurred and is continuing or when an event has occurred and is continuing or condition exists that with the giving of notice or the passage of time, or both, would be an Event of Default. The removed Trustee shall return to the University the amount of the Trustee's annual fee allocable to the portion of the then current year remaining after the removal date. Notwithstanding the foregoing, nothing contained in this Indenture shall relieve the University of its obligation to pay the Trustee's expenses incurred to the date of such removal.



**Section 1108. Appointment of Successor Trustee; Temporary Trustee.** In case the Trustee under this Indenture shall resign, be removed, be dissolved, be in course of dissolution or liquidation, or otherwise become incapable of acting under this Indenture, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor may be appointed (a) by the Authority at the direction of the University if no Event of Default has occurred and is continuing or (b) by the holders of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by the Authority or such holders, as applicable; provided, however, that in case of such vacancy the Authority, by an instrument signed by its Chairman or Vice Chairman and attested by its Secretary or Assistant Secretary under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner provided above; and any such temporary Trustee so appointed by the Authority shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. Every such Trustee appointed pursuant to this Section shall be, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, (x) a trust company or bank within or without the Commonwealth of Virginia, in good standing and having a reported capital, surplus and undivided profits of not less than \$50,000,000, or (y) a subsidiary trust company under the Trust Subsidiary Act, Title 6.1, Article 3.1, of the Virginia Code, whose parent Virginia bank or bank holding company has undertaken to be responsible for the acts of such subsidiary trust company pursuant to the provisions of Virginia Code Section 6.1-32.7(a) or any successor provision of law, and whose capital, surplus and undivided profits, together with that of its parent Virginia bank or bank holding company, as the case may be, is not less than \$50,000,000.

**Section 1109. Concerning any Successor Trustee.** Every successor Trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment under this Indenture, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Authority, or its successor, execute and deliver an instrument transferring to such successor Trustee all the properties, rights, powers and trusts of such predecessor under this Indenture; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee under this Indenture to its successor. Should any instrument in writing from the Authority be reasonably required by any successor Trustee for more fully and certainly vesting in such successor the properties, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

**Section 1110. Right of Trustee To Pay Taxes and Other Charges upon Direction.** In case any tax, assessment or governmental or other charge on any part of the University's facilities is not paid as required in this Indenture, the Trustee may pay such tax, assessment or governmental charge, without prejudice, however, to any rights of the Trustee or the holders under this Indenture arising in consequence of such failure. The Trustee shall be under no obligation to make any such payment unless it shall have been directed to do so by the holders of 10% in aggregate principal amount of Bonds then Outstanding and shall have been provided with adequate funds for the purpose of such payment.

**Section 1111. Trustee Protected in Relying on Resolutions, Etc.** The resolutions, requisitions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property, the withdrawal of cash under this Indenture or the taking of any other action by the Trustee as provided under this Indenture.

**Section 1112. Successor Trustee as Paying Agent, Registrar and Custodian of Funds.** In the event of a change in the office of Trustee the predecessor Trustee that has resigned or been removed shall cease to be paying agent and registrar for the Bonds and custodian of the funds created under this Indenture, and the successor Trustee shall become such paying agent and custodian.

**Section 1113. Removal and Resignation Not To Affect Fees.** No resignation or removal of the Trustee shall affect the obligation of the University to pay the Trustee fees that have accrued prior to the effective date of such resignation or removal and reasonable expenses of transferring funds, records and other necessary items and information to the successor Trustee under this Indenture.

**Section 1114. U.S.A. Freedom Act Requirements.** 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 who opens an account. Accordingly, the Trustee will require documentation from the Authority and each non-individual person such as a business entity, a charity, a trust, or other legal entity, including the University, verifying its formation as a legal entity. The Trustee may also request financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Authority agrees to provide its reasonable cooperation in such matters and to cause such other business entities, charities, trusts, or other legal entities to provide such reasonable cooperation if requested by the Trustee.

## ARTICLE XII

### SUPPLEMENTAL INDENTURES

**Section 1201. Supplemental Indentures Not Requiring Consent of Bondholders.** The Authority and the Trustee may, without the consent of or notice to any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) to cure any ambiguity, formal defect or omission in this Indenture;
- (b) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or either of them;
- (c) to subject to this Indenture additional revenues, properties or collateral;

(d) to modify, amend or supplement this Indenture in such manner as required (1) to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or any state securities (Blue Sky) law, or (2) to prevent the Authority, the Trustee or the University from being subject to the Investment Company Act of 1940, as amended, or any similar federal statute hereafter in effect; and

(e) to make any other change that, in the opinion of the Trustee based solely on an Opinion of Counsel, shall not prejudice in any material respect the rights of the holders of Bonds then Outstanding.

**Section 1202. Supplemental Indentures Requiring Consent of Bondholders.** Except for the Supplemental Indentures authorized by Section 1201 and subject to the terms and provisions contained in this Section, the holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right from time to time to consent to and approve the execution by the Authority and the Trustee of such other indenture or indentures supplemental to this Indenture as shall be deemed necessary or desirable by the Authority for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Indenture shall permit, or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond, (b) a reduction in the principal amount of any Bond or the rate of interest thereon, (c) an extension of time or a reduction in amount of any payment required by any sinking fund that may be applicable to any Bonds, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, without the consent and approval of the holders of all of Bonds then Outstanding.

If at any time the Authority shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall, upon arrangements satisfactory to it to provide for payment or reimbursement of any expenses, cause notice of the proposed execution of such Supplemental Indenture to be sent by first class mail to the registered owner of each Bond at his address as it appears in the registration books. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Bondholders. If, within 60 days or such longer period as shall be prescribed by the Authority following the giving of such notice, the holders of a majority in aggregate principal amount of Bonds then Outstanding shall have consented to the execution thereof as provided in this Indenture, no holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Authority from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as in this Section permitted and provided, this Indenture shall be deemed to be modified and amended in accordance therewith.

Anything contained in this Indenture to the contrary notwithstanding, the Authority, the University and the Trustee may enter into and execute any indenture supplemental to this Indenture upon receipt of the consent of the holders of all Bonds.

Bonds owned or held by or for the account of the Authority, the University or any person controlling, controlled by or under common control with either of them shall not be deemed Outstanding for the purpose of consent or any calculation of Bonds provided for in this Article. At the time of any such calculation the Authority shall furnish the Trustee a certificate of an officer of the Authority, upon which the Trustee may rely, describing all Bonds so to be excluded.

**Section 1203. Consent of University and Opinion of Counsel Required.** The Trustee shall not consent to any indenture supplemental to this Indenture pursuant to this Article unless (a) the University has consented to such amendment (provided no such consent shall be required after an Event of Default) and (b) there shall have been filed with the Trustee an Opinion of Counsel stating that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and that upon execution it will be a valid and binding obligation of the party or parties executing it, which Opinion of Counsel, to the extent appropriate, may rely on another Opinion of Counsel as to the valid and binding obligation of parties other than the Authority.

**Section 1204. Amendment without Consent of Authority.** In the event the Authority is unable to enter into any supplemental indenture permitted by this Article, the Trustee may, without action by the Authority, amend or supplement this Indenture in any manner otherwise permitted by this Article so long as such amendment or supplement does not adversely affect the rights of the Authority.

## ARTICLE XIII

### AMENDMENTS TO LOAN AGREEMENT AND SERIES 2019 NOTE

**Section 1301. Amendments to Loan Agreement and Series 2019 Note Not Requiring Consent of Bondholders.** The Authority and the Trustee may, without the consent of or notice to any of the Bondholders, consent to any amendment, change or modification of the Loan Agreement or the Series 2019 Note as may be required:

- (a) by the provisions of the Loan Agreement, the Series 2019 Note or this Indenture;
- (b) to cure any ambiguity or formal defect or omission therein;
- (c) to make any change in Section 4.6 of the Loan Agreement; or
- (d) in connection with any other change therein that, in the opinion of the Trustee which may be based solely on an Opinion of Counsel, shall not prejudice in any material respect the rights of the holders of the Bonds then Outstanding.

**Section 1302. Amendments to Loan Agreement and Series 2019 Note Requiring Consent of Bondholders.** Except for the amendments, changes or modifications to the Loan Agreement or the Series 2019 Note authorized by Section 1301, neither the Authority nor the Trustee shall consent to any amendment, change or modification of the Loan Agreement or the Series 2019 Note without the approval or consent of the holders of a majority in aggregate principal amount of Bonds then Outstanding; provided, however, that in no event shall the Authority or the Trustee consent to any amendment, change or modification that would diminish the obligation of the University to pay amounts sufficient to pay the principal of and interest on the Bonds without

the consent and approval of the holders of all of the Bonds then Outstanding. The Trustee shall give notice of any proposed amendment, change or modification requiring the consent of Bondholders in the same manner as provided in Section 1202 with respect to supplemental indentures.

**Section 1303. Opinion of Counsel Required.** The Trustee shall not consent to any amendment, change or modification of the Loan Agreement or the Series 2019 Note unless there shall have been filed with the Trustee an Opinion of Counsel stating that such amendment, change or modification is authorized or permitted by this Indenture and complies with its terms and that upon execution it will be a valid and binding obligation of the party or parties executing it, which Opinion of Counsel, to the extent appropriate, may rely on another Opinion of Counsel as to the valid and binding obligation of parties other than the Authority.

**Section 1304. RESERVED.**

## ARTICLE XIV

### MISCELLANEOUS

**Section 1401. Consents, Etc., of Bondholders.** Any consent, request, direction, approval, objection or other instrument (collectively, a “Consent”) required by this Indenture to be executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be executed by such bondholders in person or by agent appointed in writing. Proof of the execution of a Consent or of the writing appointing any such agent shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under the Consent, if the fact and date of the execution by any person of any such writing is proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit or any witness to such execution.

For all purposes of this Indenture and of the proceedings for its enforcement, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary.

**Section 1402. Limitation of Rights.** With the exception of rights in this Indenture expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties to this Indenture and the holders of the Bonds any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and agreements of this Indenture; this Indenture and all of the covenants, conditions and agreements of this Indenture being intended to be and being for the sole and exclusive benefit of the parties to this Indenture and the holders of the Bonds as provided in this Indenture.

**Section 1403. Limitation of Liability of Members, etc., of Authority.** No covenant, agreement or obligation contained in this Indenture shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, representative or agent of the Authority in his individual capacity, and neither the directors of the Authority nor any officer

thereof executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee, representative or agent of the Authority shall incur any personal liability with respect to any other action taken by him pursuant to this Indenture or the Act, provided such director, officer, employee, representative or agent does not act in bad faith.

**Section 1404. Notices.** Unless otherwise provided in this Indenture, all demands, notices, approvals, consents, requests, opinions and other communication under this Indenture shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Authority, at 300 East Washington Street, Lexington, Virginia 24450, (b) if to the Trustee, at 1021 East Cary Street, Suite 1850, Richmond, Virginia 23219 (Attention: Corporate Trust Department), (c) if to the University, at 204 West Washington Street, Lexington, Virginia 24450 (Attention: Treasurer) or (d) if to the Underwriter, at 550 S. Tryon Street, Charlotte, North Carolina 28202 (Attention: Patrick Russell, Managing Director). A duplicate copy of each demand, notice, approval, consent, request, opinion or other communication given under this Indenture by either the Authority or the Trustee to the other shall also be given to the University. The Authority, the Trustee, the University, and the Underwriter may, by notice given under this Indenture, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 1405. Information to Bondholders.** In addition to any other information to be provided to Bondholders pursuant to this Indenture, the Trustee shall keep copies of all annual audited financial statements of the University requested and received by it pursuant to Section 5.2 of the Loan Agreement, and shall furnish, at the expense of the University, to any Bondholder who requests the same in writing one copy of any such statements.

**Section 1406. Successors and Assigns.** This Indenture shall be binding upon, inure to the benefit of and be enforceable by, the parties and their respective successors and assigns.

**Section 1407. Severability.** If any provision of this Indenture shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision of this Indenture.

**Section 1408. Applicable Law.** This Indenture shall be governed by the applicable laws of the Commonwealth of Virginia without regard to its conflict of law rules.

**Section 1409. Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Authority and the Trustee have caused this Indenture to be executed in their respective corporate names as of the date first above written.

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Chairman

**U.S. BANK NATIONAL ASSOCIATION, as  
Trustee**

By: \_\_\_\_\_  
Vice President

[Signature Page to Indenture of Trust]

**FORM OF SERIES 2019 BONDS**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the issuer or its agent for registration of transfer, exchange, or payment, and any certificate is registered in the name of Cede & Co., or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

RA-\_\_\_\_\_ \$ \_\_\_\_\_

**UNITED STATES OF AMERICA**

**COMMONWEALTH OF VIRGINIA**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF**

**THE CITY OF LEXINGTON, VIRGINIA**

**Educational Facilities Revenue Refunding Bond  
(Washington and Lee University), Series 2019**

<b>INTEREST RATE</b>	<b>MATURITY DATE</b>	<b>DATED DATE</b>	<b>CUSIP</b>
_____ %	January 1, 20__	December __, 2019	_____

**REGISTERED OWNER: CEDE & CO.**

**PRINCIPAL AMOUNT:**

The **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), for value received, hereby promises to pay, upon presentation and surrender hereof at the designated corporate trust office of U.S. Bank National Association, in Richmond, Virginia, as trustee, or its successor in trust (the “Trustee”), solely from the sources and as hereinafter provided, to the registered owner hereof, or registered assigns or legal representative, the principal sum stated above on the maturity date stated above, subject to prior redemption as hereinafter provided, and to pay, solely from such source, interest hereon semiannually on each January 1 and July 1 at the annual rate (computed on the basis of a 360-day year of twelve 30-day months) stated above. Interest is payable (a) from December \_\_, 2019, if this Bond is authenticated prior to [January][July] 1, 20\_\_, or (b) otherwise from the January 1 or July 1 that is, or immediately precedes, the date on which this Bond is authenticated (unless payment of interest hereon is in default, in which case this Bond shall bear interest from the date to which interest has been paid).



Interest is payable by check or draft mailed to the registered owner hereof at its address as it appears on the 15<sup>th</sup> day of the month preceding the applicable January 1 or July 1 on registration books kept by the Trustee; provided, however, that if the Bonds are registered in the name of a securities depository or its nominee or at the option of a registered owner of at least \$1,000,000 of Bonds, payment will be made by wire transfer pursuant to the most recent wire instructions received by the Trustee from such registered owner. Principal and premium, if any, and interest are payable in lawful money of the United States of America.

This Bond and the issue of which it is a part and the premium, if any, and the interest thereon are limited obligations of the Authority payable solely from the revenues and receipts derived from and under the Loan Agreement, as hereinafter defined, and the Note, as hereinafter defined, which revenues and receipts have been pledged and assigned to the Trustee to secure payment thereof. The Bonds and the premium, if any, and the interest thereon shall not be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the City of Lexington, Virginia (the “City”). Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the City, shall be obligated to pay the principal of or premium, if any, or interest on the Bonds or other costs incident thereto except from the revenues and moneys pledged and assigned therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City, is pledged to the payment of the principal of or premium, if any, or interest on the Bonds or other costs incident thereto.

Notwithstanding any other provision hereof, this bond is subject to a book-entry system maintained by The Depository Trust Company (“DTC”), and the payment of principal, premium, if any, and interest, the providing of notices and other matters shall be made as described in the Authority’s Blanket Letter of Representations to DTC.

This Bond is one of an issue of \$ \_\_\_\_\_ Industrial Development Authority of the City of Lexington, Virginia Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019 (the “Bonds”), authorized and issued pursuant to the Industrial Development and Revenue Bond Act, Chapter 49 of Title 15.2 of the Code of Virginia of 1950, as amended, for the purpose of (a) refunding all or a portion of the Authority’s \$34,960,000 Educational Facilities Revenue Bonds (Washington and Lee University), Series 2013, (b) refunding all or a portion of the Virginia College Building Authority’s \$32,040,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2015A, and (c) financing costs of issuance[, funded interest, if any, and reserves, if any,] with respect to the Bonds.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust dated as of December 1, 2019 (the “Indenture”), between the Authority and the Trustee, which assigns and pledges to the Trustee as security for the Bonds the unsecured promissory note of the University in the principal amount of \$ \_\_\_\_\_, dated December \_\_, 2019 (the “Note”), issued and delivered pursuant to the Loan Agreement. Reference is hereby made to the Indenture and all supplements thereto for a description of the provisions, among others, with respect to the nature and extent of the rights, duties and obligations of the Authority and the Trustee, the rights of the registered owners of the Bonds and the terms upon which the Bonds are issued and secured.

The Bonds may not be called for redemption by the Authority except as provided herein and in the Indenture.

The Bonds maturing on or after January 1, 20\_\_ are subject to redemption prior to maturity at the option of the Authority (as directed by an Authorized Representative of the University), in whole or in part (in any integral multiple of \$5,000) at any time on or after January 1, 20\_\_, upon payment of 100% of the principal amount of the Bonds to be redeemed plus interest accrued to the date fixed for redemption.

The Bonds shall also be subject to redemption in whole or in part on any date, at the option of the Authority (as directed by the University), from the proceeds of casualty insurance or condemnation awards, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, without premium, plus accrued interest to the redemption date, if all or any part of the University's facilities financed or refinanced with the Bonds is damaged or destroyed or is taken through the exercise of the power of eminent domain and the Authority has delivered to the Trustee a certificate of the University to the effect that the University has determined not to use such proceeds to replace or rebuild the damaged, destroyed or taken property.

The Bonds maturing on January 1, 20\_\_, are required to be redeemed prior to maturity in part in accordance with the sinking fund requirements of the Indenture on January 1 in years and amounts, at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date, as follows:

**Year   Amount**

The Bonds maturing on January 1, 20\_\_, are required to be redeemed prior to maturity in part in accordance with the sinking fund requirements of the Indenture on January 1 in years and amounts, at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date, as follows:

**Year   Amount**

The Bonds maturing on January 1, 20\_\_, are required to be redeemed prior to maturity in part in accordance with the sinking fund requirements of the Indenture on January 1 in years and

amounts, at a redemption price of 100% of the principal amount thereof plus interest accrued to the redemption date, as follows:

**Year   Amount**

The Indenture provides for a credit against the sinking fund requirements of the Bonds to the extent the Bonds of such maturity previously have been purchased or redeemed (other than through the operation of the sinking fund) and cancelled or surrendered for cancellation and have not been applied previously as such a credit.

If less than all the Bonds are called for redemption, the maturities of Bonds to be redeemed shall be selected by the University. If less than all the Bonds of a maturity are called for redemption, the Bonds to be redeemed shall be selected by lot in such manner as the Trustee in its discretion may determine, each portion of \$5,000 principal amount being counted as one Bond for such purpose.

If any of the Bonds or portions thereof are called for redemption, the Trustee shall send a notice of the call for redemption, identifying the Bonds or portions thereof to be redeemed, by registered or certified mail, not less than 30 nor more than 60 days prior to the redemption date, to the registered owner of each Bond to be redeemed, at his address as it appears on the registration books kept by the Trustee. Provided funds for their redemption are on deposit at the place of payment on the redemption date, all Bonds so called for redemption shall cease to bear interest on such date, shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the terms of the Indenture. If a portion of this Bond is called for redemption, a new Bond in principal amount equal to the unredeemed portion hereof will be issued to the registered owner upon the surrender hereof.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein or to take any action with respect to any event of default under the Indenture or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before their stated maturity, together with interest accrued thereon. Modifications or alterations of the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds are issuable as registered Bonds in denominations of \$5,000 and multiples thereof. Upon surrender of this Bond at the designated corporate trust office of the Trustee, together with an assignment duly executed by the registered owner or its duly authorized attorney

or legal representative in such form as shall be satisfactory to the Trustee, the Authority shall execute, and the Trustee shall authenticate and deliver in exchange, a new Bond or Bonds in the manner and subject to the limitations and conditions provided in the Indenture, having an equal aggregate principal amount, in authorized denominations, of the same series, form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner hereof or its duly authorized attorney or legal representative. Any such exchange shall be at the expense of the University, except that the Trustee may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Trustee shall treat the registered owner as the person or entity exclusively entitled to payment of principal of and premium, if any, and interest on this Bond and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person or entity shown as owner as of the 15th day of the month preceding each interest payment date.

All acts, conditions and things required to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed.

This Bond shall not become obligatory for any purpose or be entitled to any security or benefit under the Indenture or be valid until the Trustee has executed the Certificate of Authentication appearing hereon and inserted the date of authentication hereon.

**IN WITNESS WHEREOF**, the Industrial Development Authority of the City of Lexington, Virginia has caused this Bond to be signed by the manual signature of its Chairman, its seal to be affixed hereon and attested by the manual signature of its Secretary, and this Bond to be dated the date stated above.

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Chairman

(SEAL)

Attest:

\_\_\_\_\_  
Secretary

Date Authenticated: December \_\_\_, 2019

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sell(s), assign(s) and transfer(s) unto

---

---

\_\_\_\_\_ (please print or typewrite Name and Address

including postal zip code of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF TRANSFEREE

\_\_\_\_\_  
: \_\_\_\_\_ :  
: \_\_\_\_\_ :

the within Bond and all rights thereunder, hereby irrevocably constituting and appointing .

---

Attorney, to transfer such Bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an Eligible Guarantor Institution such as a Commercial Bank, Trust Company, Securities Broker/Dealer, Credit Union, or Savings Association who is a member of a medallion program approved by The Securities Transfer Association, Inc.

\_\_\_\_\_  
(Signature of Registered Owners)

(NOTICE: The signature above must correspond with the name of the registered owner as it appears on the front of this bond in every particular, without alteration or enlargement or any change whatsoever.)

No. \_\_\_\_\_

**REQUISITION AND CERTIFICATE**

\$ \_\_\_\_\_  
**Industrial Development Authority of the City of Lexington, Virginia  
Educational Facilities Revenue Refunding Bonds  
(Washington and Lee University),  
Series 2019**

\_\_\_\_\_, 20\_\_

U.S. Bank National Association  
Corporate Trust Department  
1021 East Cary Street, Suite 1850  
Richmond, Virginia 23219

Ladies and Gentlemen:

On behalf of the Industrial Development Authority of the City of Lexington, Virginia (the "Authority"), I requisition from the Issuance Expense 2019 Account of the Prior Obligations Fund created by an Indenture of Trust dated as of December 1, 2019 (the "Indenture"), between the Authority and you, as Trustee, the sum of \$ \_\_\_\_\_ to be paid to \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of  
The Washington and Lee University



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**LOAN AGREEMENT**

**between**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
THE CITY OF LEXINGTON, VIRGINIA**

**and**

**THE WASHINGTON AND LEE UNIVERSITY**

**Dated as of December 1, 2019**

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**NOTE: THIS LOAN AGREEMENT AND AN EXECUTED UNSECURED NOTE IN THE FORM AS DESCRIBED HEREIN HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER AN INDENTURE OF TRUST DATED AS OF DECEMBER 1, 2019 WITH THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA, AS AMENDED OR SUPPLEMENTED FROM TIME TO TIME. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE TRUSTEE AT ITS CORPORATE TRUST OFFICE IN RICHMOND, VIRGINIA.**

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[To Be Updated]

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Exhibit A - Form of Note  
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This **LOAN AGREEMENT**, made as of the \_\_\_ day of December, 2019, between the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and **THE WASHINGTON AND LEE UNIVERSITY**, a not-for-profit Virginia non-stock corporation (the “University”);

**WITNESSETH:**

**WHEREAS**, the Authority has been duly organized pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”), which authorizes the creation of industrial development authorities by the several counties, cities and towns in Virginia and empowers such authorities to acquire, improve, maintain, equip, own and sell and make loans with respect to certain facilities, including facilities for organizations described in Section 501(c)(3) of the Code and further authorizes any such authority to issue its bonds and notes for the purpose of carrying out any of its powers or to refund bonds or notes previously issued for such purposes, to mortgage and pledge any or all of its assets, whether then owned or thereafter acquired, as security for the payment of the principal of and interest on any such bonds and notes and any agreements made in connection therewith and to pledge the revenues and receipts from loans with respect thereto, or from any other source, to the payment of such bonds and notes;

**WHEREAS**, the University, a not-for-profit Virginia non-stock corporation which is described in Section 501(c)(3) of the Code, is a private, accredited institution of higher education whose primary purpose is to provide collegiate education and not to provide religious training or theological education;

**WHEREAS**, at the request of the University, the Authority has agreed to assist the University by issuing its revenue refunding bonds for the purpose of (1) refunding all or a portion of the Authority’s \$34,960,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2013 (the “Series 2013 Bonds”); (2) refunding all or a portion of the Virginia College Building Authority’s \$32,040,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2015A (the “Series 2015A Bonds”); and (3) financing costs of issuance, funded interest, if any, and reserves, if any, with respect to the Series 2019 Bonds;

**WHEREAS**, simultaneously with the issuance by the Authority of its Educational Facilities Revenue Refunding Bonds (Washington and Lee University), Series 2019 (the “Series 2019 Bonds”) for the purposes set forth above, the Authority will loan the proceeds of the Series 2019 Bonds to the University and the University and the Authority will enter into this Loan Agreement providing, among other things, that the University agrees to repay such loan, and to evidence its payment obligations hereunder the University will execute and deliver to the Authority its promissory note (the “Series 2019 Note”) in a principal amount equal to the aggregate principal amount of the Series 2019 Bonds;

**WHEREAS**, all things necessary to constitute the Series 2019 Note a valid and binding obligation and to constitute this Loan Agreement a valid and binding agreement securing the payments under the Series 2019 Note have been done and performed and the execution and

delivery of the Series 2019 Note and this Loan Agreement, subject to the terms hereof, have in all respects been duly authorized; and

**WHEREAS**, the Authority and the University are entering into this Loan Agreement to set forth the terms and conditions under which the Authority is making the above-referenced loan;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.1 Definitions.** The following terms shall have the meaning set forth hereinafter. All other defined terms used but not defined herein shall have the same meaning as set forth in the recitals above and Article I of the Indenture unless the context clearly indicates to the contrary.

**“Facilities”** shall mean the higher education, collegiate facilities currently operated by the University on its campus, primarily located in the City of Lexington, Virginia, including fixtures and equipment, and any replacements, modifications, additions or improvements thereto.

**“Fiscal Year”** shall mean, with respect to the University, the 12-month period ending June 30 of each calendar year or such other annual fiscal accounting period for the University as may be established in the future by its board of trustees and evidenced to the Trustee in a certificate signed by an Authorized Representative of the University.

**“Indenture”** shall mean the Indenture of Trust dated as of the date hereof between the Authority and the Trustee, as amended or supplemented from time to time.

**“Loan”** shall mean the loan from the Authority to the University under this Loan Agreement to refund the Refunded Bonds.

**“Loan Agreement”** shall mean this Loan Agreement, including any amendments or supplements thereto.

**“Net Proceeds”** shall mean the gross proceeds from any insurance recovery or condemnation award remaining after payment of attorneys’ fees, fees and expenses of the Trustee and all other expenses incurred in the collection of such gross proceeds.

**“Prime Rate”** shall mean the rate per year announced from time to time by U.S. Bank National Association, as its prime rate, with any change in the Prime Rate being effective as of the date such announced prime rate is changed.

**“Refunded Bonds”** shall mean the Series 2013 Bonds maturing on [January 1, 20\_\_ through 20\_\_] and the Series 2015A Bonds maturing on [January 1, 20\_\_ through 20\_\_], inclusive.

“**Series 2019 Project**” shall mean the facilities described as such on Exhibit B to this Loan Agreement.

**Section 1.2 Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Loan Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Series 2019 Bonds shall not be deemed to refer to or connote the payment of Series 2019 Bonds at their stated maturity.

(c) All references herein to particular articles or sections are references to articles or sections of this Loan Agreement unless otherwise indicated.

(d) The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Loan Agreement nor shall they affect its meaning, construction or effect.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1 Representations by Authority.** The Authority makes the following representations:

(a) The Authority is duly organized under the Act, has the power to enter into the Indenture, the Bond Purchase Agreement and this Loan Agreement and to carry out its obligations thereunder and to issue the Series 2019 Bonds to refund the Refunded Bonds.

(b) By adoption of a resolution at the duly convened November 20, 2019 meeting of the Board of the Authority at which a quorum was present and acting throughout, the Authority has duly authorized the execution and delivery of the Indenture, this Loan Agreement and the Bond Purchase Agreement and performance of its obligations thereunder and the issuance of the Series 2019 Bonds. Simultaneously with the execution and delivery of this Loan Agreement, the Authority has duly executed and delivered the Indenture and issued and sold the Series 2019 Bonds.

(c) The Authority has not and will not pledge any payment received under this Loan Agreement other than pursuant to and as set forth in the Indenture.

(d) The Authority is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument to the best of its knowledge under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing under the provisions of any such instrument that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder; provided, however, that no representation is expressed concerning previously issued revenue

bonds for private parties, the status of which have no material adverse effect on the Authority's power or authority to carry out the transactions contemplated by this Loan Agreement.

(e) The Authority is not (1) in violation of the Act or any existing law, rule or regulation applicable to it or (2) in default under any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which any of its assets are subject; provided, however, that no representation is expressed concerning previously issued revenue bonds for private parties, the status of which have no material adverse effect on the Authority's power or authority to carry out the transactions contemplated by this Loan Agreement. The execution and delivery by the Authority of this Loan Agreement, the Indenture and the Series 2019 Bonds and the compliance with the terms and conditions thereof will not conflict with or result in the breach of or constitute a default under any of the above described documents or other restrictions.

(f) No further approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is required in connection with (1) the issuance and delivery of the Series 2019 Bonds by the Authority, (2) the execution or delivery of or compliance by the Authority with the terms and conditions of this Loan Agreement and the Indenture, or (3) the assignment and pledge by the Authority pursuant to the Indenture of its rights under this Loan Agreement and the revenues and receipts derived from the making of the Loan, including the 2019 Note and the payments thereon by the University, as security for payment of the principal of and premium, if any, and interest on the Series 2019 Bonds. The consummation by the Authority of the transactions set forth in the manner and under the terms and conditions as provided herein will comply with all applicable state, local or federal laws and any rules and regulations promulgated thereunder by any regulatory authority or agency. Notwithstanding the preceding sentences, no representation or warranty is expressed as to any action required under federal or state securities or Blue Sky laws in connection with the purchase or distribution of the Series 2019 Bonds by the Underwriter.

(g) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to its knowledge, threatened against the Authority with respect to (1) the organization and existence of the Authority, (2) its authority to make the Loan, execute or deliver this Loan Agreement, the Indenture or the Series 2019 Bonds or the assignment of the 2019 Note, (3) the validity or enforceability of any of such instruments or the transactions contemplated hereby or thereby, (4) the title of any officer of the Authority who executed such instruments, or (5) any authority or proceedings related to the execution and delivery of such instruments on behalf of the Authority. No such authority or proceedings have been repealed, revoked, rescinded or amended, and all are in full force and effect.

(h) The Authority hereby finds that the Series 2019 Project constitutes "authority facilities" under, and the making of the Loan in connection with the refinancing of the Series 2019 Project is in furtherance of the purposes for which the Authority was organized and will serve the purposes of the Act.

**Section 2.2 Representations by University.** The University makes the following representations:

(a) The University is a not-for-profit, accredited educational institution within the Commonwealth of Virginia, the primary purpose of which is to provide collegiate education and not to provide religious training or theological education.

(b) The University is a not-for-profit Virginia nonstock corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia, has the power to enter into this Loan Agreement and the transactions contemplated hereunder and by proper corporate action has duly authorized the execution and delivery of this Loan Agreement and the Series 2019 Note and the performance of its obligations hereunder and thereunder.

(c) The University is (1) a “501(c)(3) organization” described in Section 145 of the Code and exempt from federal taxation pursuant to Section 501(a) of the Code and (2) not a “private foundation” within the meaning of Section 509(a) of the Code. The University has conducted its operations and filed all required reports and documents with the Internal Revenue Service so as to maintain such status. The University is organized and operated exclusively for benevolent, fraternal, charitable or reformatory purposes, and not for pecuniary profit, and no part of its earnings inures to the benefit of any person, private stockholder or individual.

(d) The University is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under and subject to which any indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any such agreement that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

(e) There is no litigation at law or in equity or any proceeding before any governmental agency involving the University pending or, to the knowledge of the University, threatened against the University in which any liability of the University is not adequately covered by insurance or for which adequate reserves are not provided or for which any judgment or order would have a material adverse effect upon the business or assets of the University or affect its existence or authority to do business, the operation of the Series 2019 Project, the validity of this Loan Agreement or the Series 2019 Note or the performance of its obligations hereunder and thereunder.

(f) The execution and delivery of this Loan Agreement and the Series 2019 Note, the performance by the University of its obligations hereunder and thereunder and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach or result in a violation of, the University’s articles of incorporation or bylaws, any agreement or other instrument to which the University is a party or by which it is bound or any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the University or its property.

(g) The University has obtained all consents, approvals, authorizations and orders of any governmental or regulatory authority that are required to be obtained by the University as a condition precedent to the issuance of the Series 2019 Bonds, the execution and delivery of this Loan Agreement and the Series 2019 Note and the performance by the University of its obligations hereunder and thereunder, or required as of the date hereof for the acquisition, construction and equipping of facilities refinanced by the Series 2019 Project. The University will operate the



facilities refinanced as part of the Series 2019 Project as “authority facilities” within the meaning of the Act until payment of the Series 2019 Bonds in full.

(h) The University will continue to provide, as its primary business, collegiate educational services, until payment of the Series 2019 Bonds.

### ARTICLE III

#### FINANCING OF A SERIES 2019 PROJECT

**Section 3.1 Agreement to Issue Bonds.** The Authority shall issue and sell the Series 2019 Bonds and deposit the proceeds with the Trustee to be used as provided in the Indenture.

**Section 3.2 Loan by the Authority.** Upon the terms and conditions of this Loan Agreement and the Indenture, the Authority shall lend to the University the proceeds of the sale of the Series 2019 Bonds. The Loan from the sale of the Series 2019 Bonds shall be made by depositing and transferring proceeds of such sale in accordance with Section 204 of the Indenture.

**Section 3.3 RESERVED.**

**Section 3.4 Repayment of Loan.** Prior to or contemporaneously with the issuance of the Series 2019 Bonds, to evidence its obligations to repay the Loan, the University shall deliver the Series 2019 Note in substantially the form as Exhibit A and executed by the University’s President or Vice President for Finance and Treasurer to the Authority for assignment to the Trustee as security for the payment of the Series 2019 Bonds.

**Section 3.5 RESERVED.**

**Section 3.6 Limitation of Authority’s Liability.** Notwithstanding anything herein to the contrary, any obligation the Authority may incur hereunder in connection with the Loan or the undertaking of the Series 2019 Project for the payment of money shall not be deemed to constitute a general obligation of the Authority but shall be payable solely from the revenues and receipts derived by it from or in connection with the Loan, the Series 2019 Project or otherwise under this Loan Agreement, including payments received under the Notes.

**Section 3.7 Compliance with Indenture.** At the request of the University, the Authority shall (a) at any time moneys held pursuant to the Indenture are sufficient to effect redemption of the Series 2019 Bonds and if the same are then redeemable under the Indenture, take all steps that may be necessary to effect redemption thereunder, and (b) take any other action required by the Indenture.

**Section 3.8 Inspection of Project.** The Authority, the Trustee and their duly authorized agents shall have the right at all reasonable times and upon reasonable notice to the University to enter upon any part of the Series 2019 Project and to examine and inspect the same to determine compliance by the University with the terms of this Loan Agreement.

**Section 3.9 No Security Interest in Project.** This Loan Agreement is not intended to create and does not create in the Authority a security interest in any part of the Facilities or in any

part of the Series 2019 Project refinanced by the Loan as security for the payment of amounts payable hereunder or under the Notes.

## ARTICLE IV

### PAYMENTS ON THE NOTES

**Section 4.1** **Amounts Payable.** (a) The University shall make all payments required by the Notes as and when they become due and shall promptly pay all other amounts necessary to enable the Trustee to make the transfers required by Article V of the Indenture.

(b) The University shall also pay, as and when the same become due:

(i) To the Trustee, its reasonable fees for services rendered and for expenses reasonably incurred by it as Trustee under the Indenture and as bond registrar and paying agent on the Series 2019 Bonds, including the reasonable fees and disbursements of its counsel, the reasonable fees and expenses of any other paying agents and all other amounts that the University herein assumes or agrees to pay, including any cost or expense necessary to cancel and discharge the Indenture upon payment of the Series 2019 Bonds.

(ii) To the Authority, its reasonable costs, fees and expenses directly related to the Series 2019 Bonds and the Series 2019 Project, including the reasonable fees and expenses of its counsel, such other fees and expenses of the Authority, not directly related to the Series 2019 Project, but attributable to the Authority's financing of industrial or commercial projects; a reasonable share of the cost of any audit of the funds of the Authority, including the cost of collection (provided, however, that such amount shall not equal or exceed an amount which would cause the "yield" on a particular Note, this Agreement or any other "acquired purpose obligation" to be "materially higher" than the "yield" on the related series of Series 2019 Bonds, as such terms are defined in the Code).

(iii) Amounts described in Section 4.6.

(iv) All other amounts that the University agrees to pay under the terms of this Loan Agreement.

**Section 4.2** **Notes Assigned.** It is understood and agreed that all payments on the Notes, as well as the Authority's rights under this Loan Agreement (other than the right to payment of expenses pursuant to Section 4.1(b), the right to enforce compliance with Section 4.6, the right to indemnification pursuant to Section 5.8, and the right to receipt of notices pursuant to Section 8.2) are being assigned to the Trustee as security for the Series 2019 Bonds. The University consents to such assignment and agrees to pay directly to the Trustee for the account of the Authority all amounts required of the University under the Notes, and hereby agrees that, as to the Trustee, its obligation to make such payments shall be absolute and shall not be subject to any defense or any right of set-off, counter-claim, recoupment, assignment or any breach that the University may have or assert against the Authority, the Trustee, any holder of the Series 2019 Bonds or any other person.

**Section 4.3 Default in Payments.** If the University should fail to make any payments required by the Notes or this Loan Agreement when due, the University shall pay to the Trustee interest thereon until paid at a rate equal to the highest rate on any Series 2019 Bonds then Outstanding or, in case of the payment of any amounts not to be used to pay principal of or interest on Series 2019 Bonds at a rate equal to the Prime Rate plus one percent per year.

**Section 4.4 Obligations of University Unconditional.** The obligation of the University to make the payments on the Notes and to observe and perform all other covenants, conditions and agreements hereunder shall be absolute and unconditional, irrespective of any rights of setoff, recoupment or counterclaim it might otherwise have against the Authority or the Trustee. Subject to the right to prepay the Notes as provided therein, the University shall not suspend or discontinue any payment on the Notes or hereunder or fail to observe and perform any of its other covenants, conditions or agreements hereunder for any cause, including without limitation, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration, failure of title to any part or all of the Facilities or commercial frustration of purpose, or any damage to or destruction or condemnation of all or any part of the Facilities, or any change in the tax or other laws of the United States of America, Commonwealth of Virginia or any political subdivision of either, or any failure of the Authority or the Trustee to observe and perform any covenant, condition or agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with the Indenture or this Loan Agreement. The University may, after giving to the Authority and the Trustee 10 days' notice of its intention to do so, at its own expense and in its own name, or in the name of the Authority if procedurally required, prosecute or defend any action or proceeding or take any other action involving third persons that the University reasonably deems necessary to secure or protect any of its rights hereunder. In the event the University takes any such action, the Authority shall cooperate fully with the University and shall take all necessary action to substitute the University for the Authority in such action or proceeding if the University shall so request.

**Section 4.5 Advances by Authority or Trustee.** If the University shall fail to make any payment or perform any act required of it hereunder, the Authority or the Trustee (subject to the provisions of Article XI of the Indenture), without prior notice or demand on the University and without waiving or releasing any obligation or default, may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Authority or the Trustee and all costs, fees and expenses so incurred shall be payable by the University on demand as an additional obligation under the Note, together with interest thereon at the Prime Rate plus one percent per year until paid.

**Section 4.6 RESERVED.**

## ARTICLE V

### SPECIAL COVENANTS

**Section 5.1 Operation and Accreditation.** Until payment of the Notes in full, the University shall continuously operate the Facilities as an educational institution whose primary purpose is to provide collegiate education and not to provide religious training or theological

education, and shall take all action necessary to maintain its accreditation by the Commission on Colleges of the Southern Association of Colleges and Schools or comparable accrediting body.

**Section 5.2 Financial Records and Statements.** The University shall maintain proper books of record and account of its business and affairs, in which full and correct entries shall be made in accordance with generally accepted accounting principles applicable to nonprofit institutions of primary and secondary education. The University will have an annual audit made by independent certified public accountants of recognized standing and upon written request shall furnish to the Trustee and to the Authority financial statements of the University for such Fiscal Year prepared in accordance with generally accepted accounting principles applicable to nonprofit institutions of collegiate education, all in reasonable detail and certified by such accountants, together with a certificate of such accountants substantially to the effect that in making the examination necessary for their audit they have obtained no knowledge of any violation of any of the terms or provisions of the Notes or this Loan Agreement or of the occurrence of any condition, event or act that, with or without notice or lapse of time or both, would constitute an event of default hereunder or thereunder, or if such accountants have obtained knowledge of any such violation, condition, event or act, they shall specify in such certificate all such violations, conditions, events and acts and the nature and status thereof, it being understood that such accountants shall not be liable with respect to such certificate, directly or indirectly, to anyone for failure to obtain knowledge of, or, except in respect of accounting matters, to recognize, any such violation, condition, event or act.

The University authorizes and directs the Trustee to provide, at the expense of the University, copies of the financial statements of the University furnished to the Trustee to any Bondholder who requests the same in writing.

**Section 5.3 Certificate as to No Default.** Upon written request, the University shall deliver to the Authority and the Trustee within 120 days after the close of a Fiscal Year a certificate signed by an Authorized Representative of the University stating that (a)(1) the University is not in default under the Notes or this Loan Agreement, and (2) the University has no knowledge of any violation of any of the terms or provisions of the Notes or this Loan Agreement or of the occurrence of any condition, event or act that, with or without notice or lapse of time or both, would constitute an event of default hereunder or thereunder, or (b) if it is in default, specifying the nature and period of default and what action the University is taking or proposes to take to cure such default.

**Section 5.4 Maintenance of 501(c)(3) Status.** The University shall file all required reports and documents with the Internal Revenue Service so as to maintain its status as an organization described in Section 501(c)(3) of the Code, shall not operate its Facilities in any manner and shall not engage in any activities or take any action that might reasonably be expected to result in the University ceasing to be a “501(c)(3) organization” within the meaning of Section 145 of the Code. The University shall promptly notify the Trustee and the Authority of any loss of its status as a “501(c)(3) organization” or of any investigation, proceeding or ruling that might result in such loss of status.

**Section 5.5 RESERVED.**

**Section 5.6 Educational Use of Facilities.** The University shall use the facilities refinanced by the Series 2019 Bonds exclusively as facilities whose primary purpose is to provide collegiate education and not to provide religious or theological education, such facilities being for use as academic, student residences, recreational or inter-collegiate athletic facilities or administration buildings, facilities or any other structure or application usual and customary to a collegiate educational campus other than chapels and their like.

**Section 5.7 RESERVED.**

**Section 5.8 Indemnification.** (a) The University shall at all times protect, indemnify and save harmless the Authority and the Trustee (collectively, the “Indemnitees”) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (hereinafter referred to as “Damages”), including without limitation (1) all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees, if such settlement is effected with the written consent of the University, (2) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the University, the Series 2019 Project or the Indemnitees, (3) any judgments, penalties, fines, damages, assessments, indemnities or contributions, and (4) the reasonable fees of attorneys, auditors, and consultants, provided that the Damages arise out of:

(i) failure by the University or its officers, employees or agents, to comply with the terms of this Loan Agreement or the Notes, and any agreements, covenants, obligations, or prohibitions set forth therein;

(ii) any action, suit, claim or demand contesting or affecting the title of the Facilities;

(iii) any breach by the University of any representation or warranty set forth in this Loan Agreement or the Notes, or any certificate delivered by the University pursuant thereto, and any claim that any representation or warranty of the University contains or contained any untrue or misleading statement of fact or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made;

(iv) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Facilities or the Series 2019 Project, the financing of the Series 2019 Project or the Authority’s issuance of the Series 2019 Bonds; or

(v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the University, the Facilities or the Indemnitees that might adversely affect the validity or enforceability of the Series 2019 Bonds, this Loan Agreement or the Notes, or the performance by the University or any Indemnitee of any of their respective obligations thereunder; provided that such indemnity shall be effective only to the extent of any loss that may be sustained by the Indemnitees in excess of the proceeds net of any expenses of collection, received by them or from any insurance carried

with respect to such loss and provided further that the benefits of this section shall not inure to any person other than the Indemnitees.

(b) If any action, suit or proceeding is brought against the Indemnitees for any loss or damage for which the University is required to provide indemnification under this section, the University, upon request, shall at its expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by the University and approved by the Indemnitees, which approval shall not be unreasonably withheld, provided that such approval shall not be required in the case of defense by counsel designated by any insurance company undertaking such defense pursuant to any applicable policy of insurance. If an Indemnatee shall have reasonably concluded that there may be defenses available to it that are in conflict with those available to the University or to other Indemnitees (in which case the University shall not have the right to direct the defense of such action on behalf of such Indemnatee), such Indemnatee may engage separate counsel and the reasonable legal and other expenses incurred by such Indemnatee shall be born by the University. The obligations of the University under this section shall survive any termination of this Agreement, including prepayment of the Notes.

(c) Nothing contained herein shall require the University to indemnify the Authority for any claim or liability resulting from its gross negligence or willful, wrongful acts or the Trustee for any claim or liability resulting from its negligence (under the standard of care set forth in Article XI of the Indenture) or its willful, wrongful acts.

(d) All references in this section to the Authority and the Trustee, including references to Indemnitees, shall include their directors, officers, employees, representatives and agents.

**Section 5.9 Maintenance and Insurance of Facilities.** (a) The University shall, at its own expense, keep the Facilities in as reasonably safe condition as its operations shall permit and shall keep the Facilities in good repair and operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs, renewals and replacements. The University shall comply, in all material respects, with all laws applicable to the Facilities.

(b) The University shall, at its own expense, continuously maintain insurance in connection with the Facilities and the University's operations against such risks as are customarily insured against by organizations of the same general type, including without limitation insurance for property damage, liability for bodily injury, liability for property damage and workers' compensation.

(c) In lieu of insurance written by commercial insurance companies, the University may maintain a program of self-insurance or participate in reasonable group risk financing programs, including without limitation sponsored insurance programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs; provided an independent insurance consultant makes a written determination that such insurance coverage is an acceptable substitute for the insurance required in paragraph (b) above.

**Section 5.10 Corporate Existence.** The University shall maintain its corporate existence and its qualification to do business in Virginia and shall not sell or transfer any beneficial interest in the University, or dissolve or otherwise dispose of all or substantially all of its assets,

consolidate with or merge into another domestic corporation (i.e. a corporation incorporated under the laws of the United States of America or one of the states thereof) or permit one or more other domestic corporations to consolidate with or merge into it; provided, however, that the University may consolidate with or merge into another domestic corporation (i.e., a corporation incorporated under the laws of the United States of America or one of the states thereof), or permit one or more domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another domestic corporation all or substantially all of its assets and thereafter dissolve, or sell or assign all or substantially all of its assets to a governmental unit, if after giving effect to such consolidation, merger, transfer, sale or assignment the surviving, resulting or transferee corporation or governmental unit:

(a) will not be in default under any covenant under this Loan Agreement;

(b) is either a “501(c)(3) organization” described in Section 145 of the Code or a “governmental unit” within the meaning of Section 141(b)(6) of the Code[, provided that the surviving, resulting or transferee corporation or governmental unit need not qualify as a 501(c)(3) organization or governmental unit if the Trustee has received an Opinion of Bond Counsel that such action will not adversely affect the exemption of interest on the Series 2019 Bonds from gross income from federal income tax purposes];

(c) if it is not the University, has the power to assume and assumes in writing all of the obligations of the University herein and in the Notes; and

(d) if it is not a Virginia corporation or a political subdivision of the Commonwealth of Virginia, either qualifies to do business in Virginia or files with the Trustee a consent to service of process reasonably acceptable to the Trustee.

**Section 5.11 Reference to Series 2019 Bonds Ineffective after Bonds Paid and Other Obligations Satisfied.** Upon payment of the Series 2019 Bonds and upon payment of all obligations under this Agreement and the Notes, subject to Section 8.1, all references in this Agreement to the Series 2019 Bonds, the Trustee and the Authority shall be ineffective, and neither the Trustee, the holder of the Notes, the Authority nor the holders of any of the Series 2019 Bonds shall thereafter have any rights hereunder except as provided in Sections 4.1(b), 4.6 and 5.8.

**Section 5.12 Investment of Bond Proceeds.** The University may, at any time, give to the Trustee written directions respecting the investment of any money required to be invested under the Indenture, subject, however, to the provisions of Section 801 of the Indenture, and the Trustee shall then invest such money as so directed by the University. The Trustee may request, in writing, direction or authorization of the University with respect to the proposed investment of money under the provisions of the Indenture. Upon receipt of such request, accompanied by a memorandum setting forth the details of any proposed investment, the University will either approve such proposed investment or give written directions to the Trustee respecting the investment of such money.

**Section 5.13 Continuing Disclosure.** Pursuant to the Continuing Disclosure Agreement, the University has undertaken all responsibility for compliance with continuing disclosure requirements, and neither the Authority nor the Trustee shall have any liability to the Bondholders

or any other person with respect to such disclosure matters. Notwithstanding any other provision of this Indenture, failure of the University or the dissemination agent or any obligated person to comply with any continuing disclosure undertaking shall not be considered an Event of Default hereunder.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

**Section 6.1 Event of Default Defined.** Each of the following events shall be an Event of Default:

(a) Failure of the University to make any payment on the Notes when due and payable, whether at maturity, redemption, acceleration or otherwise pursuant to the terms thereof or this Loan Agreement, and the continuation of such failure for three Business Days;

(b) Failure of the University to observe and perform any of its other covenants, conditions or agreements hereunder for a period of 60 days after notice specifying such failure and requesting that it be remedied, given by the Authority or the Trustee to the University (unless the University and the Trustee shall agree in writing to an extension of such time prior to its expiration), or in the case of any such default that cannot with due diligence be cured within such 60 day period, failure of the University to proceed promptly to cure the same and thereafter cure such default with due diligence;

(c) (1) Failure of the University to pay generally its debts as they become due, (2) commencement by the University of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, (3) consent by the University to the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the University or any substantial part of its property, or to the taking possession by any such official of any substantial part of the property of the University, (4) making by the University of any assignment for the benefit of creditors generally, or (5) taking of corporate action by the University in furtherance of any of the foregoing;

(d) The (1) entry of any decree or order for relief by a court having jurisdiction over the University or its property in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, (2) appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for the University or any substantial part of its property, or (3) entry of any order for the termination or liquidation of the University or its affairs; or

(e) Failure of the University within 90 days after the commencement of any proceedings against it under the federal bankruptcy laws or other applicable federal or state bankruptcy, insolvency or similar law, to have such proceedings dismissed or stayed.

The foregoing provisions of subsection (b) are subject to the limitation that if by reason of force majeure the University is unable in whole or in part to observe and perform any of its covenants, conditions or agreements hereunder, other than its obligations contained in Sections 4.1, 4.6, 5.1, 5.4, 5.5, 5.6, 5.8, 5.10 and 5.11, the University shall not be deemed in default during



the continuance of such inability. The term “force majeure” as used herein shall include without limitation acts of God; strikes, lockouts or other disturbances; acts of public enemies; orders of any kind of the government of the United States of America or the Commonwealth of Virginia or any political subdivision thereof or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the University. The University shall remedy with all reasonable dispatch the cause or causes preventing the University from carrying out its covenants, conditions and agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the University, and the University shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of any opposing party when such course is in the judgment of the University not in its best interests.

**Section 6.2 Remedies on Default.** Whenever any Event of Default hereunder shall have occurred and is continuing, the Trustee as the assignee of the Authority:

(a) May and, if there has been an acceleration of the Series 2019 Bonds under the Indenture, shall, declare all amounts payable as principal and interest on the Notes to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) May have access to and inspect, examine and copy the financial books, records and accounts of the University.

(c) May take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition or agreement of the University under the Notes or this Loan Agreement.

**Section 6.3 Application of Amounts Realized in Enforcement of Remedies.** Any amounts collected pursuant to action taken under Section 6.2 hereof shall be applied in accordance with the provisions of the Indenture, or, if payment of the Series 2019 Bonds shall have been made, shall be applied according to the provisions of Section 1005 of the Indenture.

**Section 6.4 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy, and every remedy shall be cumulative and in addition to every other remedy herein or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

**Section 6.5 Attorney Fees and Other Expenses.** Upon an Event of Default, the University on demand shall pay to the Authority and the Trustee the reasonable fees and expenses of their attorneys and other reasonable fees and expenses incurred by either of them in the collection of payments under the Notes or the enforcement of any other obligations of the University.

**Section 6.6 No Additional Waiver Implied by One Waiver.** If either party or its assignee waives a default by the other party under any covenant, condition or agreement herein, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other default hereunder.

## ARTICLE VII

### PREPAYMENT OF THE NOTES

**Section 7.1 Option to Prepay the Notes in Whole.** The University shall have the option to prepay any Note in whole, with any applicable premium, and terminate this Loan Agreement before payment of the applicable series of Bonds, provided, however, that the covenants in Sections 5.1, 5.4, 5.5, 5.6, 5.8 and 5.10 shall continue until the final maturity date of all Bonds or the earlier redemption date on which provision for payment for all Bonds has been made and provided further that the covenant in Section 4.6 shall continue for six years after actual final payment of all the Series 2019 Bonds. In the case of such prepayment, the Authority shall cause the Trustee to redeem the related series of Bonds as provided in Section 301 of the Indenture or any applicable section of a Supplemental Indenture.

**Section 7.2 Option to Prepay the Notes in Part.** The University shall have the option to prepay any Note in part, with any applicable premium. The amount so prepaid shall, so long as all payments then due under such Note have been made (a) if the related series of Bonds are then redeemable as provided in Section 301 of the Indenture or any applicable section of the Supplemental Indenture, be used to redeem Bonds to the extent possible under such section, and (b) if Bonds are not then redeemable, be transferred to the Bond Fund.

**Section 7.3 Amount Required for Prepayment.** To prepay any Note in whole or in part under this Article VII, the University shall pay to the Trustee, for deposit in the Bond Fund, an amount of cash and Defeasance Obligations that will be sufficient (1) in the case of prepayment in whole, to discharge the lien of the Indenture pursuant to Section 901 thereof, and (2) in the case of prepayment in part, to cause any related series of Bonds (or portion thereof) that will be paid with the prepayment to no longer be Outstanding under the Indenture. If the University has prepaid any Note, as provided above, the University shall not direct the expenditure of any funds from such prepayment in the Bond Fund for any purpose other than the payment of principal or premium, if any, or interest on the related series of Bonds to be paid. The University shall instruct the Trustee to give the notice of redemption required by Section 303 of the Indenture if any of the Series 2019 Bonds are to be paid other than at maturity.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1 Term of Loan Agreement.** This Loan Agreement shall be effective upon its execution and delivery and, subject to earlier termination upon prepayment in full of the Notes and other amounts described in Article III, shall expire on the date of the last maturity of any Bonds, or if payment of the Notes has not been made on such date, when payment of the Notes shall have been made, provided, however, that the covenants in Sections 5.5 and 5.8 shall continue

until the final maturity date of all Bonds or the earlier redemption date on which provision for payment for all Bonds has been made and the covenant in Section 4.6 shall continue for six years thereafter. Upon payment of the Notes, the Authority shall cause the Trustee to redeem the Series 2019 Bonds as provided in Section 301 of the Indenture and any applicable section in the supplemental Indenture.

**Section 8.2 Notices.** All demands, notices, approvals, consents, requests, opinions and other communications hereunder shall be in writing and shall be deemed to have been given when personally delivered to the person who is to receive the same or mailed by first class registered or certified mail, postage prepaid, to his address as set forth in Section 1404 of the Indenture. A duplicate copy of each demand, notice, approval, consent, request, opinion or other communication given hereunder by either the Authority or the University to the other shall also be given to the Trustee.

**Section 8.3 Amendments.** Neither the Notes nor this Loan Agreement shall be amended or supplemented except in accordance with the provisions of Article XIII of the Indenture.

**Section 8.4 Successors and Assigns.** This Loan Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**Section 8.5 Severability.** If any provision of this Loan Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

**Section 8.6 Applicable Law; Entire Understanding.** The Notes and this Loan Agreement shall be governed by the applicable laws of the Commonwealth of Virginia without regard to its conflict of law rules. The Notes and this Loan Agreement express the entire understanding, and none of the agreements between the parties may be modified except in writing signed by the parties.

**Section 8.7 Limitation of Liability of Directors of Authority.** No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, representative or agent of the Authority in his individual capacity and neither the directors of the Authority nor any officer thereof executing the Series 2019 Bonds shall be personally liable on the Series 2019 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee, representative or agent of the Authority shall incur any personal liability with respect to any other action taken by him pursuant to this Loan Agreement or the Act, provided such director, officer, employee, representative or agent does not act in bad faith.

**Section 8.8 Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument, except that to the extent, if any, that this Loan Agreement shall constitute personal property under the Uniform Commercial Code of Virginia, no security interest in this Loan Agreement may be created or perfected through the transfer or possession of any counterpart of this Loan Agreement other than the original counterpart, which shall be the counterpart

containing the receipt therefor executed by the Trustee following the signatures to this Loan Agreement.

**Section 8.9 U.S.A. Freedom Act Requirements.** 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 who opens an account. Accordingly, the Trustee will require documentation from the Authority and each non-individual person such as a business entity, a charity, a trust, or other legal entity, including the University, verifying its formation as a legal entity. The Trustee may also request financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The University agrees to provide its reasonable cooperation in such matters and to cause such other business entities, charities, trusts, or other legal entities to provide such reasonable cooperation if requested by the Trustee.

**Section 8.10 Trustee as Third Party Beneficiary.** The Trustee shall be, and shall have the rights of, a third-party beneficiary under this Loan Agreement, which shall include the rights afforded the Trustee under the Indenture and, without limitation, the right to enforce this Loan Agreement directly against the Borrower, in its capacity as Trustee under the Indenture and as a third-party beneficiary hereof. To the extent that the preceding sentence conflicts with any assignment provisions with respect to the Trustee within this Loan Agreement, such assignment provision shall prevail and govern.

**IN WITNESS WHEREOF**, the parties hereto have caused this Loan Agreement to be executed in their respective corporate names as of the date first above written.

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Chairman

**THE WASHINGTON AND LEE UNIVERSITY**

By: \_\_\_\_\_  
Vice President for Finance and Treasurer

**RECEIPT**

Receipt of the foregoing original counterpart of the Loan Agreement dated as of December 1, 2019, between the Industrial Development Authority of the City of Lexington, Virginia, and The Washington and Lee University is hereby acknowledged this \_\_\_\_\_ day of December \_\_\_\_, 2019.

**U.S. BANK NATIONAL ASSOCIATION, as  
Trustee**

By: \_\_\_\_\_  
Title:

**Form of Note**

**Promissory Note**

\$ \_\_\_\_\_

December \_\_, 2019

The Washington and Lee University, a not-for-profit Virginia non-stock corporation within the Commonwealth of Virginia (the "University"), for value received, hereby promises to pay to the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA** (the "Authority") or assigns, in installments on January 1 in years and amounts as set forth below, the principal sum of

\_\_\_\_\_ **THOUSAND DOLLARS**

together with interest on the unpaid principal at the rates set forth below, payable from the date hereof semiannually on each January 1 and July 1, beginning January 1, 20\_\_, until the principal amount of this Note is paid in full. Such interest shall be computed at rates (computed on the basis of a 360-day year of twelve 30-day months) on the then outstanding principal amount hereof, and this Note shall mature in installments on January 1 in years and amounts, as follows:

<b><u>Due</u></b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>
<b><u>January 1</u></b>	<b><u>Amount</u></b>	<b><u>Rate</u></b>

Payments of principal and interest shall be made not less than five Business Days (as defined in the Indenture described below) before each January 1 and July 1 on which such principal and interest is due until the principal amount of this Note is paid in full. Anything herein to the contrary notwithstanding, any amount at any time held by the Trustee, hereinafter defined, in the Bond Fund referred to in the Indenture, hereinafter defined, and available for such purpose shall, at the request of the University, be credited against the next succeeding payment hereunder and shall reduce the payment to be made by the University.

The Authority, by the execution of the Indenture and the assignment form at the foot of this Note, is assigning this Note and the payments hereunder to U.S. Bank National Association, Richmond, Virginia, or its successor in trust (the "Trustee"), acting pursuant to an Indenture of Trust dated as of December 1, 2019, as it may be supplemented or amended (the "Indenture"), between the Authority and the Trustee as security for the \$ \_\_\_\_\_ Educational Facilities Revenue Refunding Bonds (The Washington and Lee University), Series 2019 Bonds (the "Series 2019 Bonds"), issued by the Authority pursuant to the Indenture. In addition to the payments of principal and interest specified above, the University also shall pay such additional amounts, if any, that, together with amounts on deposit in the Bond Fund, may be necessary to provide for the payment when due of principal of (whether at maturity, by acceleration or call for redemption or otherwise) and premium, if any, and interest on the Series 2019 Bonds. All payments hereunder shall be made in lawful money of the United States of America directly to the Trustee for the account of the Authority pursuant to such assignment and shall be applied as provided in the Indenture.

This Note is issued pursuant to a Loan Agreement dated as of December 1, 2019, as it may be amended (the "Loan Agreement"), between the University and the Authority, under which the Authority is lending the proceeds of the Series 2019 Bonds to the University. All the terms, conditions and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as part of this Note. The University shall have the option to prepay this Note, but only on the terms and conditions and in the manner specified in Article VII of the Loan Agreement.

In case an Event of Default, as defined in the Loan Agreement, shall occur and be continuing, the principal of and interest on this Note may be declared immediately due and payable.

**IN WITNESS WHEREOF**, the University has caused this Note to be executed in its corporate name by its duly authorized officer, all as of the date first above written.

**THE WASHINGTON AND LEE UNIVERSITY**

By: \_\_\_\_\_  
Vice President for Finance and Treasurer



**ASSIGNMENT**

The Industrial Development Authority of the City of Lexington, Virginia (the “Authority”), hereby irrevocably assigns, without recourse, the foregoing Note to U.S. Bank National Association, Richmond, Virginia, as Trustee under the Indenture described in the Note, and hereby directs the maker of the Note to make all payments thereunder directly to the Trustee at its corporate trust office in Richmond, Virginia, or at such other place as the Trustee may direct in writing. Such assignment is made to secure payment of the Authority’s \$\_\_\_\_\_ Educational Facilities Revenue Refunding Bonds (The Washington and Lee University), Series 2019, issued pursuant to the Indenture.

**INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF LEXINGTON, VIRGINIA**

By: \_\_\_\_\_  
Chairman

**Project Description**

The Series 2019 Project consists of:

[(a) refunding all or a portion of the Authority’s \$34,960,000 Educational Facilities Revenue Bonds (Washington and Lee University), Series 2013 (the “Series 2013 Bonds”), issued to (i) finance various capital improvements at the University, including (A) the renovation of existing buildings providing student housing and related landscape improvements (Gaines Hall, Graham-Lee Dorms and the adjoining courtyard); and (B) various projects pursuant to the University’s Annual Capital Plan; and (ii) pay costs of issuance of the Series 2013 Bonds;

(b) refunding all or a portion of the \$32,040,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2015A (the “Series 2015A Bonds”), issued by the Virginia College Building Authority (“VCBA”) to (i) refund a portion of VCBA’s Educational Facilities Revenue Bonds (Washington and Lee University), Series 2006 (the “Series 2006 Bonds”) originally issued to (X) finance various capital improvements at the University, (Y) refund the outstanding amount of VCBA’s Educational Facilities Revenue Bonds (The Washington and Lee University Project), Series 1994, and (Z) pay costs of issuing the Series 2006 Bonds, (ii) finance a portion of the costs of various capital, including (A) construction and equipping of seventeen apartment and townhouse-style buildings for student housing for approximately 336 students, (B) construction of a new pedestrian bridge crossing Woods Creek connecting pedestrian pathways between Leybum Library and the Law School, (C) renovations and improvements to the University’s athletic fields, (D) renovation, construction and equipping of certain existing indoor athletic facilities, and (E) remodeling, renovation and equipping of various capital improvements in buildings throughout Campus, such improvements including, but not limited to, updating mechanical systems, health and safety systems, and ventilation systems, updating and modernizing existing student housing, and updating building layouts; and (iii) pay costs of issuance of the Series 2015A Bonds; and

(c) financing costs of issuance, funded interest, if any, and reserves, if any, with respect to the 2019 Bonds.]