

**ADDENDA TO THE AGENDA
UNIVERSITY OF SOUTHERN INDIANA
BOARD OF TRUSTEES**

January 9, 1992

SECTION II - FINANCIAL MATTERS

A. APPROVAL OF THE HEALTH PROFESSIONS BUILDING DESIGN AND DEVELOPMENT PLANS AND COST ESTIMATES

The preliminary schematic plans and cost estimates exceeded the authorized amount available for the project. The architects will revise the plans and costs within budget. A recommendation to appoint a committee to approve the proposed Health Professions Building schematic plans and cost estimates appears in item E.

C. APPROVAL OF INTERIM FINANCING FOR THE HEALTH PROFESSIONS BUILDING

It is recommended that the following resolution for interim financing of the Health Professions Building be approved.

WHEREAS, the University of Southern Indiana (the "University") Board of Trustees (the "Board") has heretofore determined that a necessity exists to acquire, construct, renovate and equip certain educational facilities described more fully in Exhibit II-A (the "Project");

WHEREAS, the Indiana General Assembly in its 1991 Special Session Number 2 has authorized the University to proceed with the Project through a borrowing of up to \$14,540,000;

WHEREAS, the Board now desires to obtain interim financing to begin construction on the Project;

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

Section 1. The Board hereby approves the financing documents referred to in Exhibit II-B (the "Financing Documents") in substantially the form presented to this meeting, provided that the following conditions are met:

- a) The aggregate principal amount of the interim financing note (the "Note") to be issued shall not exceed the amount set forth in Exhibit II-B;
- b) The Note shall be sold at the fixed rate of interest as described in Exhibit II-B; and
- c) The final maturity of the Note shall not exceed the maturity set forth in Exhibit II-B.

Section 2. Subject to the conditions provided in Section 2 hereof, the Board Chairman, Vice Chairmen, or Treasurer, or any of them, are hereby authorized to execute and deliver the Financing Documents in substantially the form approved by the Board, with those changes that the officers so executing shall approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Subject to the conditions provided in Section 2 hereof, the Board Chairman, Vice Chairmen, or Treasurer, or any of them, are hereby authorized to execute and deliver the Note in substantially the form approved by the Board, with those changes that the officers so executing shall approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Subject to the conditions provided in Section 2 hereof, the Board Chairman, Vice Chairmen, Secretary, Assistant Secretary or Treasurer, or any of them acting singly or jointly, are hereby authorized and directed to perform any and all further acts, to execute any and all further documents or certificates and to publish any notice required to complete the execution and delivery of the Financing Documents and other matters referred to herein.

E. APPROVAL TO APPOINT COMMITTEE TO APPROVE PROPOSED HEALTH PROFESSIONS BUILDING SCHEMATIC PLANS AND COST ESTIMATES

The preliminary schematic plans and cost estimates exceed the authorized amount available for the project. The architects will revise the plans and costs within budget. If approval to proceed could be given before the next scheduled meeting of the Board in March, the completion schedule would not be affected adversely.

Approval of the following resolution is recommended.

WHEREAS, the Board of Trustees of the University of Southern Indiana wishes to enhance the completion of the Health Professions Building on a timely basis, and

WHEREAS, the next scheduled meeting of the Board of Trustees is not until March, 1992,

NOW, THEREFORE, BE IT RESOLVED THAT the Chairman of the Board is authorized to appoint a committee of Trustees to review the Health Professions Building design development plans and cost estimates, and the committee is authorized to approve the design development plans on behalf of the Board of Trustees, and the committee will report the results of the review at the next scheduled meeting of the Board of Trustees.

Maximum Principal Amount: \$9,000,000

Maximum Maturity Date: January 31, 1994

Interest Rate: 4.1% per annum

Banking or Financial Institution: Fifth Third Bank of Central Indiana

Redemption Provisions: Prepay at any time without penalty

Other Features: Interest payable semiannually beginning June 30, 1992

No required principal payment during term of note.

LOAN AGREEMENT

This Loan Agreement, dated as of the first day of January, 1992, by and between University of Southern Indiana, a statutory body corporate and politic organized under the laws of the State of Indiana (hereinafter referred to as the "University") and Fifth Third Bank of Central Indiana (herein sometimes referred to as the "Fifth Third"),

WITNESSETH

WHEREAS, the University has applied to Fifth Third for a loan in a principal amount up to Nine Million Dollars (\$9,000,000), the proceeds of which will be used by the University to finance a portion of the cost of certain facilities on its campus in and near the City of Evansville, Indiana (hereinafter referred to as the "Project"). Such facilities are more fully described in Exhibit II-A attached to this Loan Agreement and made a part hereof; and

WHEREAS, the University has obtained specific authority from the State Budget Committee, the State Budget Agency and the Governor of the State of Indiana to issue bonds pursuant to Indiana Code 20-12-6 to fund the construction of such Project; and

WHEREAS, Fifth Third is willing to make such loan or loans in the aggregate principal amount up to Nine Million Dollars (\$9,000,000) all subject to the following terms, provisions, and conditions;

NOW, THEREFORE

1. Representations and Warranties. The University represents as follows:

(a) The University has full power and authority under and by virtue of the laws of the State of Indiana, more particularly under the provisions of Indiana Code 20-12-6 and acts amendatory thereof and supplemental thereto ("Act") to construct the Project and to provide for the cost thereof with loan proceeds evidenced by its promissory note or notes executed and delivered pursuant to the terms and conditions hereof.

(b) The principal amount of its promissory note or notes evidencing the indebtedness incurred hereunder, together with other indebtedness incurred pursuant to the Act, will not exceed the aggregate principal amount of bonds, as defined in such Act, which may be issued by the University for the Project.

(c) The University has, by resolution duly adopted, authorized the loan provided for herein, the proceeds of which will be used to refinance in part the cost of constructing the Project.

(d) The University has, by resolution duly adopted, authorized its officers to execute and deliver to Fifth Third this Agreement and its promissory note or notes in the form annexed to such Agreement.

(e) The financing provided for in this Agreement has been approved by the State Budget Committee, the State Budget Agency and the Governor of the State of Indiana.

(f) The principal amount of the loan provided for in this Agreement, which will be used to provide for refinancing a portion of the cost of constructing the Project, will not exceed the total estimated cost of constructing the Project, including incidental expenses and financing costs.

(g) The University has determined that there is a need for the Project.

2. The Loan. The amount lent hereunder to the University by Fifth Third shall be evidenced by a note (referred to herein as the "Note") substantially in the form attached hereto and marked Exhibit II-C. The amount lent hereunder to the University pursuant to the Note shall not exceed Nine Million Dollars (\$9,000,000). All borrowings, payments and settlements made under this arrangement shall be made at the principal office of Fifth Third. The Note shall be dated as of the date of its issue and shall bear interest on the principal amount outstanding each day at the end of the day. (All borrowings will commence to bear interest on the day they are advanced and will bear interest through the day preceding the date of repayment; provided that if such borrowings are not paid prior to 2:00 p.m. Indianapolis, Indiana time on the date of repayment, the borrowings will bear interest through the date of repayment).

When used herein, the term "day" shall mean each actual natural calendar day; the term "business day" shall mean each day that the principal office of Fifth Third is open to the public for transaction of general banking business.

This Note shall bear interest at a rate per annum of 4.1%.

3. Notice and Time of Borrowing. The University will give Fifth Third at least three (3) banking business days' notice specifying the amount and date of borrowing. Fifth Third will make available funds covering the requested loan to the University upon the specified date of borrowing and will make the appropriate notations upon the Note.

4. Participations. Since the maximum credit afforded the University by Fifth Third pursuant to the terms of this Agreement, together with other loans made by Fifth Third to the University, may exceed the legal loan limit of Fifth Third, it is understood that Fifth Third may from time to time sell to banks of its own choosing, participations in loans made by it, and anything to the contrary notwithstanding, Fifth Third shall not be obligated to make a loan which exceeds its loan limits. Fifth Third shall keep an official record of such participation interest which shall be deemed part of the Register as provided in Section 18 hereof.

5. Place of Payment. Interest on the Note shall be payable by wire transfer to the principal banking office of Fifth Third. Principal shall be payable by wire transfer to the principal banking office of Fifth Third upon surrender of the Note.

6. Source of Payment. The University will, on or before January 31, 1994, issue permanent bonds or procure further interim financing from other sources, pursuant to the Act, the proceeds of which will be used to retire in full the indebtedness evidenced by the Note. The Note issued pursuant to this Agreement shall, except as hereinafter provided, be payable solely from any one or more of the following sources:

- (a) From the proceeds of the Note issued pursuant to this Agreement;
- (b) From the proceeds of the permanent bonds issued to pay the cost of construction of the Project; or
- (c) From other short-term obligations issued to provide interim financing for the construction of the Project; or
- (d) From student fees assessed against students attending the University, subject to the prior claim of the Trust Indenture dated as of November 1, 1985, between the University and Merchants National Bank of Terre Haute providing for the issuance of University of Southern Indiana Student Fee Bonds from time to time, other hereafter issued parity indebtedness for the Projects and any evidences of indebtedness or leases heretofore issued or entered into junior to the above-mentioned Bonds pursuant to Article IV of said Trust Indenture.

The University hereby covenants and agrees to charge and maintain its student fees in an amount sufficient in each year to pay principal of and interest on all indebtedness secured by such fees.

If the Note issued pursuant to this Agreement matures prior to the issuance of permanent bonds, the University will issue, sell and deliver other short-term obligations in an amount sufficient to pay, with other funds available therefore, the principal and interest on such Note.

The failure of the University to repay the Note or to issue permanent bonds by January 31, 1994, shall in no way relieve the University of its obligations to repay the Note or to issue such bonds. In no event shall the Note become an indebtedness of or liability against the State of Indiana.

7. Prepayment. The University may prepay at any time, in whole or in part, the Note without penalty.

8. Tax-Exempt Interest. In the event the interest on the Note is determined not to be excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986 (the "Code"), Fifth Third shall be entitled to demand repayment of the entire principal of the Note by giving the University written notice of its demand for repayment of the Note. The University shall, not later than the tenth business day following the receipt of such written notice, repay the Note in full with accrued interest to the date of such repayment. Repayment shall be made by the University to Fifth Third in federal funds by wire or otherwise.

9. Payment of Interest and Repayment of Loan. Interest only on the Note shall be payable on the last days of June and December of each year, commencing on June 30, 1992, to and including June 30, 1993, with a final payment of all unpaid principal and interest due on January 31, 1994, unless sooner paid in full. Such interest shall be calculated on the principal amount from time to time outstanding and shall be computed on a basis off a 360-day year, consisting of twelve (12) thirty (30)-day months.

10. Total Indebtedness. The University covenants that it will not issue notes or other short-term obligations for the purpose hereinabove described in aggregate amount outstanding at any one time (excluding issuance costs and other incidental expenses) exceeding Nine Million Dollars (\$9,000,000) but all notes or other short-term obligations issued within such amount for the purpose herein described shall be of equal priority, and the University covenants that if it issues

permanent bonds in an amount less than the outstanding notes or other short-term obligations, it will apply the proceeds thereof pro rata to the payment of principal and interest on all notes or short-term obligations outstanding for the Project. To the extent of its pro rata share of the proceeds of the bonds which may be issued from time to time, such notes shall no longer be deemed to be outstanding.

11. Application of Proceeds. The University covenants and agrees that the proceeds of the Note shall be applied to the financing or refinancing of the cost of construction of the Project including the reimbursement of the University for any amounts advanced by the University for such purpose.

12. Restrictions on Other Bonds. The University covenants and agrees that in the event any portion of the principal or interest evidenced by the Note is not paid at maturity, it will not issue permanent bonds for the Project pursuant to the Act unless the amount of the bond proceeds derived therefrom to the extent required is applied to pay such Note in full.

13. Condition Precedent. Prior to the initial loan hereunder, Fifth Third shall have received from Ice Miller Donadio & Ryan, Indianapolis, Indiana, their favorable written opinion substantially to the effect that:

(a) This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding agreement of the University enforceable in accordance with its terms;

(b) The Note has been duly authorized and, when executed and delivered to evidence the loan made hereunder, will constitute the legal, valid and binding obligation of the University, enforceable in accordance with its terms;

(c) Under existing laws, judicial decisions, regulations and rulings, the interest on the Note is exempt from income taxation in the State of Indiana provided that it may be expressly stated that the opinion pursuant to this subsection (e) relates only to the exemption of interest on the Note from state income taxes; and

(d) Under existing laws, regulations, rulings and judicial decisions, the interest on the Note is excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986 (the "Code"). The opinion pursuant to this subsection (f) shall relate only to the exclusion from gross income of interest on the Note for federal income tax purposes under Section 103 of the Code and may be conditioned on continuing compliance by the University with the Tax Covenants (as defined in the Loan Agreement). The opinion shall state that failure to comply with the Tax Covenants could cause interest on the Note to lose the exclusion from gross income for federal income tax purposes retroactive to the date of issue.

The foregoing opinion pursuant to this Section 13 may be made subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore and hereafter enacted and to the exercise of judicial discretion in accordance with general principles of equity. It may be also subject to the valid exercise of the constitutional powers of the State of Indiana and the United States of America.

14. Events of Default and Action Thereon. If any one or more of the following events, herein defined as and hereafter call "Events of Default" shall happen, that is to say:

(a) Default shall be made in the payment by the University of the principal of the Note when the same shall become due and payable; or

(b) Default shall be made in the payment by the University of any interest on the Note when the same shall become due and payable as therein and herein expressed; or

(c) Default shall be made by the University in the observance or performance of the provisions of Section 7.04, as amended, of the Trust Indenture between the University and Merchants National Bank of Terre Haute, as Trustee, dated as of November 1, 1985, then and in every such event Fifth Third may, in its discretion, proceed to protect and enforce its rights by suit or suits at law or in equity whether for the specific performance of any covenant or agreement herein contained, or in the execution or aid of any power herein granted or for the enforcement of any other proper legal or equitable remedy as Fifth Third being advised by counsel, shall deem most effectual to protect and enforce its rights.

15. Tax-Exempt Status of Note.

(a) The University further agrees that it will not permit the Project to be used in such a manner as would result in loss of the exclusion from gross income for federal income tax purposes of interest on the Note under Section 103 of the Code, as amended (or any successor section of such Code or subsequent federal income tax statute or code), nor will the University act in any other manner which would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Note. The foregoing covenant is based solely on current law in effect and in existence on the date of delivery of the Note.

(b) The University covenants that it will not make any investment or do any other act or thing during the period that the Note is outstanding under this Loan Agreement which would cause the Note to become or be classified as an "arbitrage bond" within the meaning of Section 148 of the Code (or any successor section of such Code or subsequent federal income tax statute or code). The foregoing covenant is based solely on current law in effect and in existence on the date of delivery of the Note.

(c) It shall not be an event of default under this Loan Agreement if the interest on the Note loses the exclusion from gross income for federal income tax purposes pursuant to any provision of the Code which is not currently in effect and existence on the date of issuance of the Note except as stated above.

(d) The University hereby incorporates in this Loan Agreement the representation warranties and covenants made by the University in its "Tax Certificate of the University" and "Non Arbitrage Certificate" included in the transcript of which this Loan Agreement is a part.

(e) The representations, warranties and covenants contained in this Section 15 and in Section 20 are known as the "Tax Covenants".

16. Amendments. This Agreement may be amended only by an agreement in writing executed by the University and Fifth Third.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

18. Registration: Persons Treated as Owners. So long as the Note shall remain outstanding, the University shall keep a register for the registration and transfer of the Note (herein referred to as the "Register").

The Note shall be transferable only on the Note Register at the principal office of the University, at the written request of the registered owner thereof or his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the University duly executed by the registered owner or his duly authorized attorney.

The University and any agent of the University may treat the person in whose name the Note is registered as the owner of the Note for the purpose of receiving payment of principal of and interest on the Note and for all other purposes whatsoever whether or not the Note is overdue, and neither the University nor any agent of the University shall be affected by notice to the contrary.

19. Exchange: Transfer. The registered Note, upon surrender thereof at the principal office of the University with a written instrument of transfer satisfactory to the University, duly executed by the registered owner or his duly authorized attorney, may at the option of the holder thereof, be exchanged for an equal aggregate principal amount of registered note or notes.

In all cases in which the privilege of exchanging notes or transferring registered notes is exercised, the University shall execute and deliver the Note in accordance with the provisions of this Loan Agreement. For every exchange or transfer of the Note the University may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The University shall not be obliged to make any such exchange or transfer of the Note during the 15 days next preceding an interest payment date on the Note.

20. Designation of Note. The University represents that:

(a) The Note is not a private activity bond as defined in Section 141 of the Code;

(b) The reasonably anticipated amount of qualified tax-exempt obligations (including tax-exempt leases and qualified 501(c)(3) obligations but excluding other private activity bonds) which will be issued by or in the name of the University and all units subordinate to the University during 1992 does not exceed \$9,000,000; and

(c) The University, anybody acting in the name of the University and any entity subordinate to the University, have designated no more than \$9,000,000 of qualified tax-exempt obligations during 1992, including the Note.

The University hereby designates the Note as a qualified tax-exempt obligation for purposes of Section 265(b) of the Code.

IN WITNESS WHEREOF, the University and Fifth Third have executed this Agreement as of the day and year first above written.

UNIVERSITY OF SOUTHERN INDIANA

By _____
Byron C. Wright, Treasurer

FIFTH THIRD BANK OF CENTRAL INDIANA

By _____

FULLY REGISTERED PROMISSORY NOTE

For value received, the University of Southern Indiana ("University") will pay to Fifth Third Bank of Central Indiana on January 31, 1994, solely out of the funds hereinafter referred to, the principal sum set forth below as "Balance Owing" at the office of Fifth Third Bank of Central Indiana or registered assigns and will likewise pay to the order of said payee from the date hereof interest at the rate or rates described below, all without relief from valuation and appraisal laws with costs of collection and reasonable attorneys' fees. Said interest will be due and payable on the last days of June 30, 1992, to and including June 30, 1993, with a final payment of principal of and interest on the Note at maturity or upon payment of all or part of the principal amount outstanding, and will be calculated on the principal amount from time to time outstanding as provided in the Loan Agreement described below.

This Note shall bear interest at a rate per annum of 4.10%.

This note is issued pursuant to and subject to the terms and conditions of a certain Loan Agreement dated as of January 1, 1992, by and between University of Southern Indiana and Fifth Third Bank of Central Indiana, the terms of which Agreement are incorporated herein by reference.

This note is issued to provide funds for refinancing interim borrowing which was applied to the cost of construction of the Project as described in the above-mentioned Agreement, prior to the issuance by University of Southern Indiana of permanent bonds pursuant to Indiana Code 20-12-6 ("Act") to provide funds for said Project.

This note and the interest thereon shall be payable solely from any one or more of the following sources:

1. From the proceeds of the note or notes issued pursuant to the above-mentioned Agreement;
2. From the proceeds of the permanent bonds issued to pay the cost of the construction of such Project; or
3. From other short-term obligations issued to provide interim financing for such Project; or
4. From student fees assessed against students attending the facilities of the University, subject to liens and claims described in said Agreement. The University covenants and agrees to charge and maintain student fees in an amount sufficient in each year to pay principal of and interest due on all indebtedness secured by such fees.

The University reserves the right to prepay on any date, in whole or in part, any of the principal hereof without premium or penalty.

This note is issued pursuant to the provisions of the Act, and, as provided for in such Act, the University shall not be obligated to pay this note or the interest thereon except from the funds and income as foresaid, and no recourse shall be had for the payment of the principal or interest thereof against the State of Indiana or against the property or funds of the State of Indiana.

UNIVERSITY OF SOUTHERN INDIANA

By _____
Byron C. Wright, Treasurer

Dated: January ____, 1992

<u>Date</u>	<u>Amount Loaned</u>	<u>Amount Paid</u>	<u>Balance Owing</u>	<u>Authorized Initials</u>
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