

RESOLUTION NO.**PARLIAMENT**

WHEREAS by virtue of section 3 of the *University of the West Indies (Guarantee of Loans) Act*, the Government may by resolution of both Houses of Parliament, guarantee in such manner and on such terms and conditions as it thinks fit, the payment of any amount borrowed by the University of the West Indies, together with the interest payable on the amount;

AND WHEREAS the University on the 6th day of March, 2007, entered into an agreement with the Caribbean Development Bank, an entity having corporate status, for a loan in the sum of three million, five hundred thousand United States dollars on the terms and conditions set out in the *Schedule* to this Resolution for the purpose of financing infrastructural work at the Cave Hill Campus;

BE IT RESOLVED that Parliament approve the guarantee by the Government of the principal and interest necessary for the redemption of the loan in the sum of three million, five hundred thousand United States dollars.

SCHEDULE

Terms and Conditions

Borrower:	The University of the West Indies (UWI).
Guarantor:	Government of Barbados (GOBD).
Loan Amount and Funding Source:	A loan of an amount not exceeding the equivalent of three million, five hundred thousand United States Dollars (USD3.5 mn) representing 80% of the project cost. The loan will be funded from the Ordinary Capital Resources (OCR) of the Caribbean Development Bank (CDB).
Repayment Terms:	Repayable in 17 years including a 3 year grace period at a variable interest rate, currently 6.25% per annum (p.a.), reviewable semi-annually. A commitment charge of 1% p.a. on the undisbursed balance of the loan, commencing from the 60th day after the date of the Loan Agreement, will also be payable.

ARTICLE I

Application of General Provisions

Section 1.01 Application of General Provisions: These General Provisions set forth certain terms and conditions generally applicable to guarantees of loans made by the Bank for public sector projects and shall apply to Guarantee Agreements in respect of any such guarantees to such extent, and subject to such modifications, as may be provided in such agreements, provided however that, where there is no Executing Agency as party thereto, references in these General Provisions to the Executing Agency shall be disregarded.

Section 1.02 Inconsistency with Guarantee Agreement: If any provision of a Guarantee Agreement is inconsistent with a provision of these General Provisions, the provision of the Guarantee Agreement shall prevail.

ARTICLE II

Definitions, References, Headings

Section 2.01 Definitions: Wherever used in these General Provisions, unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Provisions applicable to the Loan Agreement shall have the respective meanings therein set forth.

Section 2.02 References: References in these General Provisions to Articles or Sections are to Articles or Sections of these General Provisions and reference to the singular shall include the plural and vice versa unless the context otherwise requires.

Section 2.03 Table of Contents and Headings: The Table of Contents and headings of the Articles and Sections are inserted for convenience of reference only and are not a part of these General Provisions.

ARTICLE III

Priority of Loan, Cooperation, Taxes, Transfer or Assignment, Cancellation of Guarantee

Section 3.01 Priority of Loan: (a) It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets.

(b) To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created by the Guarantor on any governmental assets as security for any external debt, such lien will, *ipso facto*, and at no cost to the Bank equally and ratably secure the payment of Principal, interest, commission, commitment charge and other charges and that in the creation of any such lien express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing provisions of this Section shall not apply to:

- (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or
- (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one (1) year after its date.

- (d) As used in this Section the term:
- (i) “external debt” means any debt payable by the Guarantor in any medium other than the currency which at the time in question is legal tender in the Project Country whether such debt is payable absolutely or at the option of the creditor in such other medium; and
 - (ii) “governmental assets” means assets of the Project Country, of any of its political sub-divisions and of any agency of the Project Country or of any such political sub-division, including any institution performing the functions of a central bank.

Section 3.02 Cooperation between the Guarantor and the Bank:

(a) The Guarantor and the Bank shall cooperate fully to ensure that the purpose of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as either shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the Project Country, its international balance of payments and its external debt.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to the matters relating to the purpose of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes, or threatens to interfere, with the accomplishment of the purpose of the Loan or the maintenance of the service thereof or the performance by the Borrower or the Executing Agency or the Guarantor of their several obligations under the Loan Agreement or the Guarantee Agreement.

(c) The Guarantor shall afford all reasonable opportunities for accredited representatives of the Bank and the Aid Donor(s) to visit any part of the Project Country for purposes related to the Loan.

Section 3.03 Taxes: (a) The Guarantee Agreement, any agreement amending or supplemental to the Guarantee Agreement and any transfer or assignment pursuant to Section 3.04 shall be free from any taxes that shall be imposed under the Laws of the Project Country on or in connection with the execution, issue, delivery or registration thereof.

(b) The Principal, interest, commission, commitment charge and other charges shall be paid without deduction for, and free from, any taxes, and free from all restrictions, imposed under the laws of the Project Country or the laws in effect in the Project Country.

Section 3.04 Transfer or Assignment: The Bank shall be entitled to transfer or assign to the Aid Donor(s) all or any of its right, title and interest in and under the Guarantee Agreement and in and to the whole or any part of the monies whatsoever due or to become due to the Bank thereunder. The Bank shall promptly inform the Guarantor of any such transfer or assignment.

Section 3.05 Cancellation of Guarantee: If the Borrower shall have failed to make payment of Principal, interest, commission, commitment charge or other charges (otherwise than as a result of any act or omission of the Guarantor) and such payment shall have been made by the Guarantor, the Guarantor may, after consultation with the Bank, by notice to the Bank and the Borrower and the Executing Agency terminate its obligations under the Guarantee Agreement with respect to any amount unwithdrawn from the Loan Account on the date of receipt of such notice by the Bank and not subject to any special commitment entered into by the Bank pursuant to Section 4.02 of the General Provisions applicable to the Loan Agreement. Upon receipt of such notice by the Bank, such obligations in respect of such amount shall terminate.

ARTICLE IV

Miscellaneous

Section 4.01 The obligations of the Guarantor under the Guarantee Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to, or demand upon, the Guarantor with regard to any default by the Borrower or the Executing Agency and shall not be impaired by any of the following:

- (i) any extension of time, forbearance or concession given to the Borrower or the Executing Agency;
- (ii) any assertion of or failure to assert or delay in asserting any right, power or remedy against the Borrower or the Executing Agency in respect of any security for the Loan;
- (iii) any modification or amplification of the provisions of the Loan Agreement contemplated by the terms thereof;
- (iv) any failure of the Borrower or the Executing Agency to comply with any requirement of any law, regulation or order of the Project Country or of any political subdivision or agency of the Government of the Project Country; or
- (v) any purported or actual transfer or assignment by the Bank of its rights pursuant to Section 7.07 of the General Provisions applicable to the Loan Agreement.

Section 4.02 No delay in exercising or omission to exercise any power or remedy occurring to any party under the Guarantee Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or any acquiescence in such default; nor shall the action of such party in respect of any default or any

acquiescence in any default affect or impair any right, power or remedy of such party in respect of any other subsequent default.

Section 4.03 Any notice, request or other communication required or permitted to be given or made under the Guarantee Agreement shall be in writing and shall be addressed to the appropriate party at the address set forth in the Guarantee Agreement or at such other place as such party may designate in writing. Except as otherwise provided in Section 5.03, any such notice, request or communication shall be deemed to have been duly given or made when delivered by hand or mail or by telegram, cable, telex, telefax or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in the Guarantee Agreement or at such other address as such party may have designated by notice to the party giving such notice or making such request or other communication.

Section 4.04 The Guarantor shall furnish to the Bank sufficient evidence of the authority of the person or persons who will take action or execute any documents required or permitted to be taken or executed on behalf of the Guarantor under the Guarantee Agreement and the authenticated specimen signature of each such person.

Section 4.05 Any action required to be taken and any documents required or permitted to be executed under the Guarantee Agreement on behalf of the Guarantor may be taken or executed by the representative of the Guarantor designated in the Guarantee Agreement for the purpose of this Section or by any person thereunto authorised in writing by him.

Section 4.06 Subject to Article 42 of the Agreement establishing the Bank, if the Guarantor ceases to be a member of the Bank, any amount due to it for its shares repurchased by the Bank shall be withheld so long as the Borrower remains liable to the Bank in respect of the Loan. Such amount may, at the option of the Bank, be applied on any such liability as it matures.

Section 4.07 Subject to Article 46 of the Agreement establishing the Bank, in the event of a distribution of the assets of the Bank, the Guarantor shall not be entitled to receive its share in such distribution until it has settled its obligations to the Bank under the Guarantee Agreement.

Section 4.08 The Guarantee Agreement shall bind and enure to the benefit of the assigns of the Bank pursuant to Section 3.04.

ARTICLE V

Termination

Section 5.01 The Guarantee Agreement shall not become effective until evidence, satisfactory to the Bank, has been furnished to the Bank that the execution and delivery of the Guarantee Agreement on behalf of the Guarantor have been duly authorised or ratified.

Section 5.02 As part of the evidence to be furnished pursuant to Section 5.01, there shall be furnished to the Bank an opinion or opinions, satisfactory to the Bank, from a legal practitioner, acceptable to the Bank, showing that the Guarantee Agreement has been duly authorised or ratified by and executed and delivered on behalf of the Guarantor and constitutes a valid and binding obligation of the Guarantor in accordance with its terms.

Section 5.03 Except as the Bank and the Guarantor otherwise agree, the Guarantee Agreement shall come into force and effect on the date on which the Bank despatches to the Guarantor notice of its acceptance of the evidence required by Section 5.01.

ARTICLE VI

Termination

Section 6.01 Upon payment in full of the amount withdrawn from the Loan Account and all interest, commission, commitment charge and other charges, the Guarantee Agreement and all obligations of the parties thereto shall forthwith terminate.

ARTICLE VII

Enforceability

Section 7.01 Enforceability: The rights and obligations of the Bank and the Guarantor under the Guarantee Agreement shall be valid and enforceable in accordance with their terms. Neither the Bank nor the Guarantor shall be entitled in any proceeding under or pursuant to Article VIII to assert any claim that any provision of the Loan Agreement or of the Guarantee Agreement is invalid or unenforceable because of any provision of the agreement establishing the Bank or for any other reason.

ARTICLE VIII

Arbitration

Section 8.01 (a) Any controversy between the parties to the Guarantee Agreement and any claim by any such party against any other such party arising out of the Guarantee Agreement which shall not be determined by agreement between the parties shall be submitted to Arbitration before an Arbitration Committee as hereinafter provided.

- (b) The parties to such Arbitration shall be the Bank on the one side and the Guarantor on the other.
- (c) The Arbitration Committee shall consist of three arbitrators appointed as follows:

One arbitrator shall be appointed by the Bank; the second by the Guarantor; and the third arbitrator (hereinafter called the Umpire) shall be appointed by agreement between the parties either directly or through their respective arbitrators. If the parties fail to agree on who shall be the Umpire, he shall be appointed at the request of either party by the Secretary-General of the Caribbean Community. If either side shall fail to appoint an arbitrator, such arbitrator shall be appointed by the Secretary-General of the Caribbean Community at the request of the other party. If either of the appointed arbitrators or the Umpire is unwilling or unable to act or to continue to act in such capacity, his successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his predecessor.

- (d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to Arbitration, the nature of the remedy sought and the name of the arbitrator appointed by the party instituting such proceedings. Within thirty (30) days after the giving of such notice, the other party shall notify the party instituting the proceedings of the name of the arbitrator appointed by such other party.

(e) If within sixty (60) days after giving notice instituting the arbitration proceedings the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section. If within forty-five (45) days after becoming entitled to do so neither party requests the appointment of an umpire as provided in paragraph (c) of this Section, the arbitration proceedings shall be deemed to have been abandoned.

(f) The Arbitration Committee shall convene in Barbados at such time and place as shall be fixed by the Umpire. Thereafter the Arbitration Committee shall meet in Barbados or in the Project Country at such time and place as the Arbitration Committee shall determine.

(g) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitration Committee shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitration Committee shall be by majority vote.

(h) The Arbitration Committee shall afford both sides a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitration Committee shall constitute the award of the Arbitration Committee. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this paragraph shall be final and binding upon the parties to the Guarantee Agreement. Each party shall abide by and comply with any such award rendered by the Arbitration Committee in accordance with the provisions of this paragraph.

(i) The parties shall fix the amount of remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. The Bank and the Guarantor shall each defray its own expenses in the arbitration proceedings. The costs of the Arbitration Committee shall be divided between and borne equally by the Bank on the one side and the Guarantor on the other. Any question concerning the division of the costs of the Arbitration Committee or the procedure for payment of such costs shall be determined by the Arbitration Committee.

(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the determination of any controversy between the parties to the Guarantee Agreement or any claim by any such party against the other party arising thereunder.

(k) If within thirty (30) days after the counterparts of the award shall be delivered to the parties the award shall not be complied with, any party may enter judgement upon or institute a proceeding to enforce the award in any court of competent jurisdiction against the other party; may enforce such judgment by execution, or may pursue any other appropriate remedies against such other party for the enforcement of the award and the provisions of the Guarantee Agreement. Notwithstanding the foregoing, this paragraph shall not authorise any entry of judgment or enforcement of the award against the Guarantor except as such procedure may be available otherwise than by reason of the provisions of this paragraph.

(l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 4.03. The parties hereto waive any and all other requirements for the service of any such notice or process.

ADDENDUM

The University of the West Indies, Cave Hill Campus has agreed to borrow from the Caribbean Development Bank US\$3.5 million to finance the expansion of the Cave Hill School of Business Inc. This sum is being borrowed on the terms and conditions set out in the Schedule.

Parliamentary approval is being sought for the Government of Barbados to act as guarantor for the repayment of the principal and interest payable in connection with the discharge of the loan.