

APPENDIX Z

MOTION TO APPROVE TRUST/CUSTODIAN AGREEMENTS FOR OPTIONAL RETIREMENT PROGRAM

WHEREAS, the University of North Carolina has authority from the General Assembly to operate an Optional Retirement Program (hereafter “ORP”, which is understood to include its UNC Qualified Governmental Excess Benefit Arrangement) for statutorily designated employees, and has been operating that Program since 1972; and

WHEREAS, N.C.G.S. 135-5.1(d) states that the Board of Governors “shall approve the form and contents of such {annuity} contracts or trust agreement;” and

WHEREAS, N.C.G.S. 135-5.1(d) further states that “In making this designation and giving such approval, the Board shall give due consideration to the following:

- (1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for participants and their beneficiaries;
- (2) The relation of these rights and benefits to the amount of contributions to be made;
- (3) The suitability of these rights and benefits to the needs of the participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and
- (4) The ability of the designated company or companies underwriting the annuity contracts or trust agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes;” and

WHEREAS, this Board has previously approved JPMorgan Chase Bank, N.A., Fidelity Management Trust Company, and Wilmington Trust Company as trustees and/or custodians for the ORP; and

WHEREAS, a Custodial Account Agreement for a Non-Trusteed Governmental 401(a) Plan, a Custodial Account Agreement for a 403(b) Plan, and a Custodial Account Agreement for a Governmental Non-Trusteed 415(m) Plan, all between JPMorgan Chase Bank, N.A. and UNC have been presented for review; and

WHEREAS, the form and contents of the three Custodial Account Agreements have been negotiated between the said bank and UNC; and

WHEREAS, the said bank has required that the Agreements limit its responsibility/legal liability and also, in effect, require UNC to indemnify it in matters where the said bank was not negligent, and did not engage in fraud or willful misconduct; and

WHEREAS, TIAA-CREF has agreed to indemnify UNC for any payment it makes pursuant to the above clauses in the Custodial Account Agreements; and

WHEREAS, UNC would not sign these Agreements if it were not indemnified for such payments; and

WHEREAS, it appears that the form and contents of the Custodial Agreements meet the above listed statutory criteria; and

WHEREAS, a First Amendment to Trust Agreement Between Fidelity Management Trust Company and University of North Carolina and a First Amendment to Group Custodial Agreement Between Fidelity Management Trust Company and University of North Carolina have been presented for review; and

WHEREAS, the form and contents of these two Amendments have been negotiated between the said Trust Company and UNC; and

WHEREAS, it appears that the form and contents of the two Amendments meet the above listed statutory criteria; and

WHEREAS, a Trust Agreement Between The University of North Carolina and Wilmington Trust Company, as Trustee was presented for review; and

WHEREAS, the form and contents of this Trust Agreement has been negotiated between the said trust company and UNC; and

WHEREAS, the said trust company has required that the Agreement include that each direction to the trustee/custodian, such as to sell or purchase investments, constitutes a representation and warranty, permits it to obtain payment for its services from the trust fund if Lincoln National Life Insurance Company should not pay it, and may, in effect, require UNC to indemnify it under certain situations; and

WHEREAS, UNC has begun discussions with Lincoln National Life Insurance Company for indemnity or other protection for any payment it makes pursuant to the above clause in the trust agreement; and

WHEREAS, UNC also will be presented additional trust and/or custodial agreements by Wilmington Trust Company which will contain the same substantive provisions of the reviewed Trust Agreement; and

WHEREAS, UNC would not sign these Agreements if it were not indemnified or otherwise protected for any such payments; and

WHEREAS, it appears that the form and contents of the Trust and/or Custodial Agreements meet the above listed statutory criteria; and

NOW THEREFORE, I move that the Board of Governors approve the Custodial Agreements that have been presented for review between UNC and JPMorgan Chase Bank, N.A., contingent upon TIAA-CREF contracting with UNC to indemnify UNC for any payment UNC makes pursuant to the above recited provisions; and

FURTHERMORE, I move that the Board of Governors approve the two Amendments with Fidelity Management Trust Company; and

FURTHERMORE, I move that the Board of Governors approve the Trust Agreement and additional trust/custodial agreements containing the same substantive terms with Wilmington Trust Company, contingent upon Lincoln contracting with UNC to indemnify or otherwise protect UNC for any payment UNC makes pursuant to the above recited provisions; and

FURTHERMORE, I move that the Vice President for Finance be authorized to sign the said Trust Agreements and Custodial Agreements on behalf of UNC.

Charles H. Mercer, Jr., Chair
Committee on Personnel and Tenure
Approved by the Committee on June 8, 2006

Received and Approved by the Board of Governors
June 9, 2006

Secretary of the University
Date Signed: