

APPENDIX CC

MOTION TO APPROVE TRUSTEES/CUSTODIANS 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 designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Optional Retirement Program;” 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, at different times in the past, the Board of Governors designated the four current companies to sell annuity contracts, or to sell mutual funds and use a trustee to handle and hold those assets, which companies are Teachers Insurance and Annuity Association of America and College Retirement Equities Fund (hereafter “TIAA-CREF”), The Variable Annuity Life Insurance Company, a member company of American International Group, Inc. (hereafter “AIG VALIC”); Lincoln National Life Insurance Company (of Lincoln Financial Group) (hereafter “Lincoln”); and Fidelity Investments Institutional Services Company, Inc. (hereafter “Fidelity”); and

WHEREAS, changes in investment fund options to be offered beginning on or about July 1, 2006 will include mutual funds for the first time for three of the companies, requiring the appointment of a custodian or trustee for purchasing, selling, and holding those mutual funds, and for other functions; and

WHEREAS, the above four named companies have selected the banks with which to offer such services to the ORP; and

WHEREAS, TIAA-CREF has selected JPMorgan Chase Bank, N.A. as custodian; AIG VALIC has selected AIG Federal Savings Bank as trustee and custodian; and Lincoln has selected Wilmington Trust Company as trustee and custodian; and

WHEREAS, in 1999 Fidelity selected Fidelity Management Trust Company as trustee and custodian, and it is desirable at this time to ratify that selection; and

WHEREAS, upon inquiry it appears that these named trustees and custodians are able, reputable companies which are well capitalized and financially sound, and are federally regulated. They meet the above listed statutory criteria.

NOW THEREFORE, I move that the Board of Governors approve the selection as trustee and/or custodian for the ORP of: JPMorgan Chase Bank, N.A.; AIG Federal Savings Bank; and Wilmington Trust Company; and

FURTHERMORE, I move that the Board of Governors ratify the past selection of Fidelity Management Trust Company as trustee and custodian.

Charles H. Mercer, Jr., Chair
Committee on Personnel and Tenure
Approved by the Committee on May 11, 2006

Received and Approved by the Board of Governors
May 12, 2006

**MOTION TO APPROVE TRUST/CUSTODIAN AGREEMENTS
AND ANNUITY CONTRACTS, AND ANNUITY COMPANY 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, Group Annuity Contracts have been presented for review from The Variable Annuity Life Insurance Company, a member company of American International Group, Inc. (hereafter "AIG VALIC"); Lincoln National Life Insurance Company (of Lincoln Financial Group) (hereafter "Lincoln"); and Principal Life Insurance Company (selected by ORP company Fidelity Investments Institutional Services Company, Inc.) (hereafter "Principal"); and

WHEREAS, this is the first time that Principal has provided services under the ORP; and

WHEREAS, upon inquiry, it appears that Principal is an able, reputable company which is financially sound and well-capitalized; is a public corporation regulated by the federal Securities and Exchange Commission and the North Carolina Commissioner of Insurance; and meets the above listed statutory criteria; and

WHEREAS, the North Carolina Commissioner of Insurance, pursuant to N.C.G.S. 58-3-150, has the legal authority and legal obligation to review and approve the form of annuity contracts offered for sale in North Carolina; and

WHEREAS, AIG VALIC, Lincoln, and Principal have each stated that their Group Annuity Contract has been approved by the North Carolina Commissioner of Insurance as follows: AIG VALIC on December 29, 2005, Lincoln on August 31, 2004; and Principal on October 28, 2002; and

WHEREAS, the review of the form and contents of the annuity contracts by the Board of Governors duplicates the work of the Commissioner of Insurance, and, as a result (i) UNC has limited ability to negotiate changes, and (ii) any such changes would require subsequent approval by the Commissioner of Insurance, this Board concludes its review of the form and contents of the annuity contracts is more limited than its ability to review the form and contents of other contracts related to the ORP; and

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

WHEREAS, a Trust Agreement and Custodial Agreements have been presented for review between UNC and AIG Federal Savings Bank; and

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

WHEREAS, AIG Federal Savings Bank has required that the agreements state that it shall not be liable for any action taken in good faith based upon the books of account or other records of the trust or custodial accounts, and for any action taken based upon the

opinion of counsel, accountant or auditor, if it exercised due care in selecting such counsel, accountant, or auditor; and

WHEREAS, VALIC has agreed to indemnify UNC for any payment it makes pursuant to the above clause in the trust and/or custodial agreements; and

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

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

NOW THEREFORE, I move that the Board of Governors approve the use of Principal to provide annuities in conjunction with an approved ORP company, Fidelity; and

FURTHERMORE, I move that the Board of Governors approve the Group Annuity Contracts presented for AIG VALIC, Lincoln, and Principal; and

FURTHERMORE, I move that the Board of Governors approve the Trust Agreement and Custodial Agreements that have been presented for review between UNC and AIG Federal Savings Bank, contingent upon VALIC contracting with UNC to indemnify UNC for any payment UNC makes pursuant to the above recited clauses due to the books of account or other records, or due to the opinion of counsel, accountant or auditor; 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 May 11, 2006

Received and Approved by the Board of Governors
May 12, 2006

MOTION TO DELEGATE AUTHORITY TO THE PRESIDENT

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(e) states that "The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program

and may perform or authorize the performance of all functions necessary for its administration;” and

WHEREAS, the Board of Governors delegated certain administrative authority to the President on March 17, 1995 and May 11, 2001, with the limitation that the evaluation, and selection and removal, of investment funds for the ORP could not be delegated by the President ; and

WHEREAS, the Board of Governors is about to enter into numerous contracts for the ORP with insurance companies, banks, and mutual fund companies; and

WHEREAS, it is desirable to reaffirm this Board’s prior delegation to the President, assisted by staff, of administrative functions and to clarify that delegation of authority; and

WHEREAS, it is the intent of the Board of Governors to delegate the full administrative responsibilities that it may lawfully delegate to the President, including the authority to function as the Plan Administrator of the ORP, subject to 1) the limitations set out herein, 2) the UNC ORP Investment Policy Statement, and 3) policies of this Board; and

WHEREAS, G.S. 135-5.1 does not currently allow delegation of authority to designate companies to provide annuity contracts and to serve as trustees for mutual funds, and does not allow delegation of authority to approve the form and contents of annuity contracts and trust agreements, but does allow delegation of the remainder of the administrative functions; and

WHEREAS, by way of illustration and not as limitation, such delegation would include approval of service contracts with designated companies and other contracts that do not require this Board’s approval, hiring consultants, evaluation of designated company and fund performances, review of Qualified Domestic Relations Orders (QDROs), and determination of vesting; and

WHEREAS, the Board of Governors is willing for the President, in the President’s discretion, to delegate functions of the ORP administration to members of his staff, except that the selection and removal of investment funds for the ORP shall not be delegated by the President ; and

WHEREAS, this Motion should not be read or understood to affect any prior ORP functions or administrative actions conducted by the President or his staff.

NOW THEREFORE, I move that the Board of Governors delegate the full administrative responsibilities that it may lawfully delegate to the President, including the authority to function as the Plan Administrator of the ORP, subject to 1) the limitations set out herein, 2) the UNC ORP Investment Policy Statement, and 3) policies of this Board ; and

FURTHERMORE, I move that the President, in the President's discretion, may delegate to the President's staff any of the functions of administration of the ORP, except the selection and removal of investment funds for the ORP shall not be delegated by the President; and

FURTHERMORE, I move that the Board of Governors indicate this Motion should not be read or understood to affect any prior ORP functions or acts of administration conducted by the President or his staff, and hereby ratify the administrative actions previously taken.

Charles H. Mercer, Jr., Chair
Committee on Personnel and Tenure
Approved by the Committee on May 11, 2006

Received and Approved by the Board of Governors
May 12, 2006