

Amendment to Use Agreement – The University of North Carolina at Pembroke

ISSUE OVERVIEW

The University of North Carolina at Pembroke requests that the Board of Governors authorize an amendment to one or more previously approved use agreements related to the financing of certain student housing facilities on the campus of UNC Pembroke that were constructed through a university-related nonprofit entity, The UNC Pembroke Student Housing Foundation, LLC (the “Foundation”).

The Foundation was created for the purpose of constructing student housing on the campus of UNC Pembroke. To finance and refinance the student housing facilities, the Foundation executed and delivered (1) Taxable Limited Obligation Bonds, Series 2010B (Build America Bonds) (the “2010 BABs”) and (2) a Limited Obligation Bond, Series 2017 (the “2017 Bond”). For each series of bonds, UNC Pembroke entered into a separate use agreement and lease agreement, which were previously approved by the Board and the Council of State. Each use agreement established UNC Pembroke’s payment obligations under the corresponding lease in an amount equal to the debt service on the corresponding series of bonds.

Due to the current favorable interest rate environment, the Foundation has the opportunity to refinance the 2010 BABs and pass on the savings to UNC Pembroke, which UNC Pembroke anticipates will reduce its payment obligations under the corresponding lease and use agreement by approximately \$1.2 million on a net present value basis, representing roughly 7.5% of the par amount refunded. In addition, UNC Pembroke may have the opportunity to refinance, as part of the same transaction, the 2017 Bond, which it will pursue only if the transaction produces incremental savings for UNC Pembroke.

Refinancing the 2010 BABs and, if applicable, the 2017 Bond, will require an amendment to the corresponding use agreement to reflect UNC Pembroke’s lower payment obligations with respect to each series of bonds, as well as to make certain conforming changes to reflect other terms of the transaction.

Because the 2010 BABs were executed and delivered as taxable “Build America Bonds” under the American Recovery and Reinvestment Act of 2009, UNC Pembroke’s payments with respect to the 2010 BABs are reduced by a subsidy payment from the federal government equal to a percentage of each interest payment. The subsidy, which was originally set at 35% of each interest payment, has been reduced in recent years due to federal budget sequestration. In addition to the anticipated savings described above, refinancing the 2010 BABs with traditional, tax-exempt bonds will eliminate the risk associated with any further reduction or elimination of the federal subsidy payments.

UNC Pembroke anticipates that the Foundation’s refunding bonds will be sold in the public market on a negotiated basis by an underwriter to be determined.

The University of North Carolina at Pembroke currently has an issuer credit rating of “A-” by Standard & Poor’s with a stable outlook. Standard and Poor’s has assigned a rating to the 2010 BABs and the Foundation’s other parity debt of “BBB-”, with a stable outlook. This transaction is expected to have no impact on the credit rating for UNC Pembroke or the Foundation’s housing bonds.

Parker Poe Adams & Bernstein LLP is bond counsel, and First Tryon is the financial advisor to UNC Pembroke.

It is recommended that UNC Pembroke be authorized to enter into the amendment to the use agreements as set out in the attached resolution.

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A RESOLUTION AUTHORIZING AGREEMENTS RELATED TO THE REFINANCING OF RENTALS RELATED TO THE PRIVATE HOUSING FACILITIES ON THE CAMPUS OF THE UNIVERSITY OF NORTH CAROLINA AT PEMBROKE

WHEREAS, by Chapter 116 of the General Statutes of North Carolina, the Board of Governors (the “Board”) of the University of North Carolina System (the “UNC System”) is vested with general control and supervision of the constituent institutions of the UNC System; and

WHEREAS, The UNCP Student Housing Foundation, LLC (the “Company”) executed and delivered its Certificates of Participation (The University of North Carolina at Pembroke Student Housing Project), Series 2004 (the “2004 Certificates”), the proceeds of which were used to acquire, construct and equip the student housing facilities known as “Village Apartments” comprising approximately 360 beds (the “2004 Project”); and

WHEREAS, the Company executed and delivered its Certificates of Participation (The University of North Carolina at Pembroke Student Housing Project), Series 2006 (the “2006 Certificates”), the proceeds of which were used to construct, acquire and equip student housing facilities known as “Oak Hall” containing approximately 360 beds (the “2006 Project”); and

WHEREAS, the Company executed and delivered its Limited Obligation Bonds (The University of North Carolina at Pembroke Student Housing Project), Series 2010A (the “2010A Bonds”) and Taxable Limited Obligation Bonds (The University of North Carolina at Pembroke Student Housing Project), Series 2010B (the “2010B Bonds”), the proceeds of which were used to construct, acquire and equip student housing facilities comprising approximately 476 beds (the “2010 Project” and together with the 2004 Project and the 2006 Project, the “Project”); and

WHEREAS, the Company executed and delivered its Refunding Limited Obligation Bond (The University of North Carolina at Pembroke Student Housing Project), Series 2017 (the “2017 Bond”), the proceeds of which were used to refund the 2004 Certificates and the 2006 Certificates; and

WHEREAS, The University of North Carolina at Pembroke (“UNC Pembroke”) and the Company and UNC Pembroke entered into a Second Amended and Restated Use Agreement dated as of September 1, 2010, as amended by the First Amendment to the 2010 Use Agreement dated as of March 31, 2017 (the “2010 Use Agreement”), whereby UNC Pembroke assumed the obligations of the State under the Lease (as defined therein) and is obligated to pay Base Rentals and Additional Rentals to the Company related to the use of the Project; and

WHEREAS, UNC Pembroke and the Company and its financial advisor have advised the Board that it may be able to achieve debt service savings and reduce the risk of further cuts in federal subsidy payments related to the 2010B Bonds and may be able to achieve debt service savings related to the 2017 Bond; and

WHEREAS, pursuant to Supplemental Indenture, Number 4 (the “Fourth Supplement” and, together with the Indenture of Trust dated as of January 1, 2004 as previously supplemented, the “Indenture”) between the Company and U.S. Bank National Association (as successor to First Citizens Bank & Trust Company, the “Trustee”), the Company will execute and deliver Refunding Limited Obligation Bonds (The University of North Carolina at Pembroke Student Housing Project) (with appropriate series designations) (the “2019 Bonds”) (1) in an aggregate principal amount not to exceed \$19,000,000 (the “2019 Bonds”), to provide the funds required to prepay all or a portion of the 2010B Bonds in advance of their maturities, to fund a debt service reserve fund, if necessary, and to pay the costs of issuing the 2019 Bonds and (2)) if incremental savings can be achieved for

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UNC Pembroke, in an aggregate principal amount not to exceed \$16,500,000, to provide the funds required to prepay the 2017 Bond in advance of its maturity, to fund a debt service reserve fund, if necessary, and to pay the costs of issuing the 2019 Bonds; and

WHEREAS, the Company will execute and deliver the 2019 Bonds evidencing proportionate undivided interests in the Base Rentals with respect to the Project paid by UNC Pembroke under the Lease in order to provide the funds required to prepay the 2010B Bonds and, if feasible, the 2017 Bond, and the Base Rentals are required to be in an amount not less than the payments on the 2019 Bonds, and any remaining outstanding 2010B Bonds and 2017 Bond, and the Company has assigned its rights to receive such Base Rentals under the Lease to the Trustee for the benefit of the holders of the Certificates Outstanding under the Indenture; and

WHEREAS, in connection with execution and delivery of the 2019 Bonds, the Company and UNC Pembroke will execute and deliver the Second Amendment to the 2010 Use Agreement (the “*Second Amendment*”) and collectively with the 2010 Use Agreement, the “*Use Agreement*”) to reduce the Base Rentals under the 2010 Use Agreement and to make other necessary changes; and

WHEREAS, the 2019 Bonds are not and will not be an obligation of the Board or UNC Pembroke, but will be secured solely from the Base Rentals paid by UNC Pembroke under the Lease; Base Rentals are to be paid from (1) net revenues of the Project and (2) to the extent such revenues are insufficient therefor, Dormitory System Net Revenues after payment of UNC Pembroke’s Dormitory System Debt and General Revenue Debt (all as defined in the Use Agreement); and

WHEREAS, there has been presented to the Board forms of the Second Amendment and the Fourth Supplement which the Board proposes to approve and authorize UNC Pembroke to execute and deliver;

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

Section 1. **Authorization of Second Amendment and Fourth Supplement.** That the form and content of the Second Amendment and the Fourth Supplement be and the same hereby are in all respects authorized, approved and confirmed, and the Chancellor and Vice Chancellor for Finance and Administration of UNC Pembroke and the Chairman of the Board, the President of the UNC System, the Senior Vice President for Finance and Administration and CFO of the UNC System, the Secretary and the Assistant Secretary of the Board and the Secretary of the UNC System, or anyone acting in an interim capacity, individually and collectively (collectively, the “*Authorized Officers*”), be and they hereby are authorized, empowered and directed to execute, approve and deliver the Second Amendment and the Fourth Supplement, as applicable, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the Board’s approval of any and all such changes, modifications, additions or deletions therein, and that from and after the execution and delivery of the Second Amendment and the Fourth Supplement, the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Second Amendment and the Fourth Supplement as executed.

Section 2. General Authority. From and after the execution and delivery of the documents hereinabove authorized, the Authorized Officers are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed, and are further authorized to take any and all further actions to execute and deliver any and all other documents as may be necessary to the issuance and on-going

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administration of the Bonds. Any provision in this Resolution that authorizes more than one Authorized Officer to take certain actions shall be read to permit such Authorized Officers to take the authorized actions either individually or collectively.

Section 3. *Conflicting Provisions.* All resolutions or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

Section 4. *Effective Date.* This Resolution is effective on its adoption.

PASSED, ADOPTED, AND APPROVED this 20th day of September, 2019.

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STATE OF NORTH CAROLINA

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SECRETARY'S CERTIFICATE

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SS:

OF AUTHENTICATION

COUNTY OF ORANGE

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I, Meredith McCullen Steadman, Acting Secretary of the University of North Carolina System, *DO HEREBY CERTIFY* that (1) the foregoing is a full, true and correct copy of the approving resolution adopted by the Board of Governors of the University of North Carolina System at its regular meeting on September 20, 2019, (2) notice of the meeting of the Board of Governors of the University of North Carolina System held on September 20, 2019 was sent to each member of the Board, and (3) a quorum was present at the meeting on September 20, 2019 at which time the foregoing Resolution was adopted.

WITNESS, my hand and the seal of the University of North Carolina this ____ day of _____, 2019.

[SEAL]

Meredith McCullen Steadman, Acting Secretary of the
University of North Carolina