

Amendment to Use Agreement – Fayetteville State University

ISSUE OVERVIEW

Fayetteville State University (FSU) requests that the Board of Governors authorize an amendment to a previously approved use agreement related to the financing of the Renaissance Hall student housing facility on the campus of FSU, which was constructed through a university-affiliated nonprofit entity, Fayetteville State University Housing, LLC (the “Company”).

Subject to approval by the board to amend the use agreement, the Company will issue refunding limited obligation bonds in an aggregate principal amount not to exceed \$20,000,000 (the “2021 Bonds”) for the purpose of refinancing its Limited Obligation Bonds, Series 2011 (the “2011 Bonds”).

The Company was created for the purpose of constructing student housing on the campus of FSU. To finance Renaissance Hall, the Company executed and delivered the 2011 Bonds. In connection with the delivery of the 2011 Bonds, FSU entered into a use agreement and a lease agreement, which were previously approved by the Board and the Council of State. The use agreement established FSU’s payment obligations under the lease in an amount equal to the debt service on the 2011 Bonds.

Due to the current favorable interest rate environment, the Company has the opportunity to refinance the 2011 Bonds and pass on the savings to FSU, which FSU anticipates will reduce its payment obligations under the lease and use agreement by approximately \$1,800,000 on a net present value basis, representing roughly 10 percent of the par amount refunded.

Refinancing the 2011 Bonds will require an amendment to the use agreement to reflect FSU’s lower payment obligations with respect to the 2021 Bonds.

FSU anticipates that the Company’s 2021 Bonds will be sold on a negotiated basis to an underwriter, or through a private placement with a financial institution. These will be selected in either case through a competitive RFP process and in consultation with the Senior Vice President for Finance and Administration.

FSU currently has an issuer credit rating of “BBB+” with a negative outlook by Standard and Poor’s and an issuer credit rating of “A” with a stable outlook by Fitch. The Company’s 2011 Bonds are currently rated “BBB” with a stable outlook by Standard and Poor’s and “A-” with a stable outlook by Fitch. This transaction is expected to have no impact on the credit rating for FSU or the Company’s 2021 Bonds.

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

RECOMMENDATION

It is recommended that FSU be authorized to enter into the amendment to the use agreement 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 FAYETTEVILLE STATE UNIVERSITY

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, Fayetteville State Housing, LLC (the “*Company*”), as lessee, and the State of North Carolina (the “*State*”), as lessor, entered into a Lease Agreement dated August 12, 2011 (the “*Ground Lease*”), whereby the Company leased from the State the real property (the “*Project Site*”) on which the Company constructed the student housing facilities known as Renaissance Hall comprising approximately 336 beds (the “*Project*”) on the campus of Fayetteville State University (“*FSU*”);

WHEREAS, the Company, as lessor, and the State, as lessee, entered into a Lease Agreement dated August 12, 2011 (the “*Lease*”), whereby the Company leased to the State the Project Site and whereby FSU agreed to pay Base Rentals and any Additional Rentals (as those terms are defined in the Use Agreement hereinafter defined) to the Company;

WHEREAS, the Company and FSU entered into a Use Agreement dated as of May 15, 2011 (the “*2011 Use Agreement*”), whereby FSU assumed the obligations of the State under the Lease, operates and maintains the Project and is obligated to pay Base Rentals and any Additional Rentals to the Company, as described in the 2011 Use Agreement;

WHEREAS, the Company executed and delivered its Limited Obligation Bonds (Fayetteville State University Housing Project), Series 2011 (the “*2011 Bonds*”), the proceeds of which were used to construct the Project, under an Indenture of Trust dated as of May 15, 2011 (the “*2011 Indenture*”) between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the “*Trustee*”); and

WHEREAS, FSU and the Company and its financial advisor have advised the Board that it may be able to achieve debt service savings by refunding all or a portion of the 2011 Bonds; and

WHEREAS, to achieve the refunding of the 2011 Bonds, the Company will execute and deliver its Refunding Limited Obligation Bonds (Fayetteville State University Student Housing Project) (with appropriate series designations) in an aggregate principal amount not to exceed \$20,000,000 (the “*2021 Bonds*”) pursuant to the 2011 Indenture and a Supplemental Indenture, Number 1 (the “*Supplement*”) and, together with the 2011 Indenture, the “*Indenture*”) between the Company and the Trustee;

WHEREAS, in connection with execution and delivery of the 2021 Bonds, the Company and FSU will execute and deliver an Amendment to the 2011 Use Agreement (the “*Amendment*”) and collectively with the 2011 Use Agreement, the “*Use Agreement*”) to reduce the Base Rentals under the 2011 Use Agreement to reflect the refunding and to make other necessary changes; and

WHEREAS, the 2021 Bonds will be secured solely from the Base Rentals paid by FSU under the Lease and as otherwise set forth in the Lease, the Use Agreement and the Indenture;

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WHEREAS, Loop Capital Markets LLC (the “*Placement Agent*”) will serve as the placement agent for the 2021 Bonds and will place the 2021 Bonds pursuant to the terms of a placement agent agreement (the “*Placement Agreement*”) between the Placement Agent and the Company; and

WHEREAS, there is now on file with the Board and FSU forms of the following documents (the “*Financing Documents*”), which the Board proposes to approve and authorize FSU to execute and deliver, as applicable:

1. the Amendment;
2. the Supplement; and
3. the Placement Agreement;

WHEREAS, there will be a Limited Offering Memorandum relating to the 2021 Bonds (the “*Limited Offering Memorandum*”) that will include certain information about FSU;

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

Section 1. Authorization of the Amendment and the Supplement. That the form and content of the Amendment and the Supplement be and the same hereby are in all respects authorized, approved and confirmed, and the Chancellor and Vice Chancellor for Business and Finance of FSU 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 Amendment and the Supplement 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.

Section 2. Authorization of Placement Agreement. The form and content of the Placement Agreement is in all respects authorized, approved and confirmed. The Authorized Officers are authorized and empowered to execute and deliver the Placement Agreement, including any Letter of Representations attached thereto.

Section 3. Authorization of Limited Offering Memorandum. The Board of Trustees of FSU will approve the form and content of the Limited Offering Memorandum and the delivery and use of the Limited Offering Memorandum.

Section 4. General Authority. From and after the execution and delivery of the Financing Documents, 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 the Financing 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 administration of the 2021 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.

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Section 5. 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 6. Effective Date. This Resolution is effective on its adoption.

PASSED, ADOPTED, AND APPROVED this 22nd day of April, 2021.