ACTION ITEM: Authorization of agreements related to the acquisition and construction of student-housing facilities in the new Village

BACKGROUND INFORMATION:

In September 2009, the Board of Trustees approved proceeding with the development of a new student residential and recreational neighborhood and approved the authorization to enter into a 30-year master lease arrangement (with one 10-year renewal option) with the Capital Facilities Foundation, Inc. for UNCG to lease up to 1,000 beds for student residential facilities and operate it as part of UNCG’s student-housing program. The Capital Facilities Foundation, Inc. was to acquire and develop the property in the Glenwood neighborhood area and UNCG was to pay to the Foundation rental for the facilities.

The Foundation is finalizing the acquisition of the properties required for the first phase of the new Village, and construction will need to begin shortly for the student-housing facilities. Authorizing agreements are necessary to be in place in order to secure bank financing and state approval for the project. This includes the Lease, Deed of Trust, Use Agreement and Assignment of Rents.

REQUIREMENT:

In accordance with the legislation contained in North Carolina General Statutes concerning the acquisition and leasing of property, action is needed by the Board of Trustees to authorize the agreements.

RECOMMENDED ACTION:

That the Board of Trustees of The University of North Carolina at Greensboro approve the following resolution:

____________________________________
Reade Taylor
Vice Chancellor for Business Affairs
RESOLUTION OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO AUTHORIZING AGREEMENTS RELATED TO THE ACQUISITION AND CONSTRUCTION OF PRIVATE HOUSING FACILITIES ADJACENT TO THE CAMPUS OF THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO

WHEREAS, the Board of Trustees (the “Board”) of The University of North Carolina at Greensboro (“UNCG”) has requested the State of North Carolina (the “State”), on behalf of UNCG, to enter into a lease agreement (the “Lease”) to be dated on or about August 1, 2011 (the “Lease”) by and between the Capital Facilities Foundation, Inc. (the “Corporation”), as lessor, and the State, as lessee, whereby the Corporation will lease to the State for a term of approximately thirty years (subject to renewal periods) the real property (the “Project Site”) on which the Corporation has acquired a student housing facility containing approximately 70 beds and on which the Corporation intends to construct student housing facilities containing approximately 800 beds and related common areas and parking facilities (the “Project”) and whereby UNCG will agree to pay Base Rentals and any Additional Rentals (as those terms are defined in the Use Agreement, hereinafter defined) to the Corporation;

WHEREAS, UNCG will operate and manage the Project under the terms of a Use Agreement dated as of August 1, 2011 (the “Use Agreement”) between UNCG and the Corporation, whereby UNCG will agree to operate and manage the Project as part of its campus dormitory system and whereby UNCG has and will assume the obligations of the State under the Lease to pay Base Rentals and any Additional Rentals to the Corporation. Base Rentals are to be paid from (1) revenues of the Project and (2) to the extent such revenues are insufficient therefor, revenues received by UNCG from its dormitory system after payment of the existing obligations of UNCG with respect to its dormitory system specified in the Use Agreement;

WHEREAS, UNCG and the Corporation will select a financial institution or institutions (collectively, if more than one, the “Bank”), and such Bank will advance an amount to the Corporation (the “Advance”) in order to enable the Corporation to acquire, construct and equip the Project;

WHEREAS, the Corporation, as assignor, will enter into an Assignment of Base Rentals, Leases and Use Agreement with the Bank, as assignee, to be dated as of August 1, 2011 (the “Assignment”) whereby the Corporation will unconditionally and absolutely assign to the Bank all of its right, title and interest in the Lease and the Use Agreement (except for certain reserved rights under the Use Agreement) and whereby UNCG agrees to make Base Rental payments directly to the Bank with interest accruing on the principal amount of the Advance at a variable or fixed rate of interest, as described in the Use Agreement. Base Rentals will be paid from (1) Net Project Revenues and (2) Housing System Net Revenues after payment of UNCG’s Housing System Debt and General Revenue Debt as described in the Use Agreement;

WHEREAS, to further secure its obligation under the Assignment, the Corporation will execute and deliver a Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing (the “Deed of Trust”) to the deed of trust trustee named therein for the benefit of the Bank;

WHEREAS, there has been made available to the Board the Use Agreement, the Assignment, the Lease and the Deed of Trust;

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Authorization of Use Agreement and Assignment. That the form and content of the Use Agreement and Assignment be and the same hereby are in all respects authorized, approved and
confirmed, and the Chancellor or Vice Chancellor for Business Affairs of UNCG be and they hereby are authorized, empowered and directed to execute, approve and deliver the Use Agreement and Assignment, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as shall 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 Use Agreement and Assignment, and the Chancellor or Vice Chancellor for Business Affairs of UNCG 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 Use Agreement and Assignment as executed.

Section 2. Authorization of the Lease and Deed of Trust. That the form and content of the Lease and the Deed of Trust be and the same hereby are in all respects authorized, approved and confirmed.

Section 3. General Authority. From and after the execution and delivery of the documents hereinabove authorized, the Chancellor and Vice Chancellor for Business Affairs of UNCG 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 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 complete the transaction contemplated by the Use Agreement, the Assignment, the Deed of Trust or the Lease.

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

ADOPTED AND APPROVED this _____ th day of ____________, 2011.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO

By: ______________________________________
   Secretary
STATE OF NORTH CAROLINA  )
   )
COUNTY OF GUILFORD  )

I, ______________________, the duly elected Secretary of the Board of Trustees of The University of North Carolina at Greensboro, DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of the Resolution adopted by the Board of Trustees of The University of North Carolina at Greensboro at its meeting of ________________, 2011 and appearing in the minutes of such meeting.

WITNESS, my hand and the seal of The University of North Carolina at Greensboro this ___ day of ______, 2011.

[SEAL]

__________________________
Secretary