

EXHIBIT "C"
LISTING AGREEMENT
FOR SALE

Lexington Fayette Urban County Government ("Owner" or "LFUCG") appoints **Cushman & Wakefield U.S., Inc.** ("C&W") as its sole agent and grants to C&W the exclusive right to sell the real property located at **Coldstream Research Campus being 1500,1501,1525,1565,1776 & 1785 McGrathiana Parkway, Lexington, Fayette County, KY being approximately 40 acres and Legacy Business Park 2850 Georgetown Road, Lexington, Fayette County, KY being approximately 200 acres** (the "Property") as provided below.

1. Term. The term of this agreement will commence on **February 17, 2023** and will expire on **February 17, 2024**. Either party shall have the right to terminate the listing agreement with thirty (30) days advanced written notice to the other any time after February 17, 2023.
2. Services. C&W will use its commercially reasonable efforts to obtain a satisfactory purchaser for the Property at a sale price to be determined by Owner and on such other terms as are acceptable to Owner. C&W will negotiate the business terms of any purchase and sale agreement on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. C&W will cooperate with other licensed real estate brokers.
3. Marketing. C&W's relevant pages in response to RFP 51-2022 are attached hereto as Exhibit E and incorporated herein by reference. C&W will act substantially in conformity with its proposal in marketing the Property. Owner authorizes C&W to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. C&W, at its own expense, will place its standard sign on the Property and will prepare and distribute a standard brokerage flyer. All advertising whether prepared or issued by C&W or by Owner will identify C&W as Owner's exclusive agent for the Property.
4. Referrals. During the term of this agreement, Owner will refer to C&W all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.
5. Commission. If, during the term hereof, Owner sells any interest in the Property, Owner will pay to C&W a commission in accordance with the attached Schedule of Commissions. Within 10 days after the end of the term, C&W will provide to Owner a written list of prospective purchasers to whom the Property was submitted by any party during the term. If a prospective purchaser, appearing on the list, enters into a purchase and sale agreement within 120 days after the end of the term, and thereafter the sale is closed, Owner will pay a commission to C&W as provided above. Owner agrees that such 120day period will be extended for so long as negotiations with a prospective purchaser are continuing.
6. Outside brokers. If C&W recognizes an outside broker authorized to represent the purchaser in a transaction for which a commission is payable hereunder, C&W will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule, and if such other broker agrees, Owner will pay C&W the commission computed and payable in accordance with the annexed Schedule out of which C&W will pay to such other broker its agreed upon commission and retain the balance of the commission as C&W's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained. Under no circumstances will Owner be

obligated to pay a commission exceeding that provided in the Schedule nor shall C&W be responsible for the failure to reach an agreement with the other broker. The term "outside broker" means a broker other than **David Kelly, Jeffrey Bender and Seattle Stein**.

7. Representation of Purchasers. Owner acknowledges and agrees that C&W may represent potential purchasers and consents to such dual representation, provided C&W timely discloses any such dual representation to Owner.
8. Authority. Owner represents that it is in fact the owner of the Property and has the right to sell the Property. The individuals signing below represent that they are authorized to sign this agreement on behalf of the entity indicated.
9. Professional Advice. Notwithstanding any provision contained in this Agreement to the contrary, it is expressly acknowledged that this Agreement is for C&W's real estate brokerage services only, and C&W's other service lines, including without limitation, assets services, project management, and appraisal, are not a part of the scope of this Agreement. Nothing in this Agreement shall be deemed or construed so as to require C&W to perform the services of architects, engineers, contractors, accountants, legal counsel or other professions requiring special licenses (other than a real estate broker) or make Broker responsible for the failure of the various professionals retained by Owner to properly perform their services. Without limitation of the foregoing, C&W shall not be responsible for determining the legal sufficiency of any lease agreement and all other documents relating to any leasing transaction contemplated by this Agreement; and C&W shall not be responsible for determining the tax consequences of any leasing transaction contemplated by this Agreement; and C&W shall not have the ultimate responsibility for determining the financial condition and capabilities of any prospective tenant. All final business and legal decisions shall be made solely by Owner. Without limitation of the foregoing, C&W recommends that Owner obtain legal, tax or other professional advice relating to this Agreement and any proposed lease of the Premises as well as the condition and/or legality of the Premises, including, but not limited to, the Premise's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. C&W will have no obligation to investigate any such matters.
10. Indemnity and Insurance: The following provisions are expressly intended to replace and supersede the insurance and indemnity provisions of LFUCG RFQ #51-2022 (the "RFQ") for purposes of indemnity and insurance obligations of C&W pertaining to the engagement contemplated by this agreement, the RFQ and that certain Professional Services Agreement by and between C&W and Owner dated on or about the date hereof:

a. Indemnity:

The following provisions are intended to replace any and all provisions regarding C&W's indemnification of LFUCG contained in the RFQ in their entirety:

C&W shall indemnify, save, hold harmless and defend Owner and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, reasonable documented out of pocket defense costs and reasonable attorney's fees to the extent arising from third party claims for C&W's breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness,

or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of C&W; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.

Notwithstanding the foregoing, with respect to any professional real estate brokerage services performed by C&W hereunder (and to the fullest extent permitted by law), C&W shall indemnify, save, hold harmless and defend LFUCG from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, reasonable documented out-of-pocket defense costs and reasonable attorney's fees, to the extent arising out of a third-party claim for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of the negligence, recklessness or willful misconduct of C&W in the performance of this agreement.

In event of a claim or suit to which any of the foregoing indemnifications apply, Owner agrees to do the following: (i) to give C&W prompt notice thereof; (ii) to permit C&W, at its option, to defend such claim or suit with counsel of its choice reasonably acceptable to the Owner, the cost thereof to be included within the total limitation of liability hereunder; and (iii) not to settle such claim or suit without C&W's prior written consent, unless such settlement does not require the C&W to make any payment in which case C&W's prior written consent shall not be required.

Notwithstanding any provision to the contrary herein, in the RFQ or elsewhere, any indemnification and/or defense obligation flowing from C&W to Owner for professional real estate brokerage services rendered under this agreement: (i) shall be limited to the amount of Commission actually paid to C&W by Owner for the transaction contemplated by this agreement; (ii) shall not extend to any claims that arise from: (a) any representation or warranty made by C&W and authorized by Owner or any authorized agent of Owner or based upon or derived from written information provided by Owner to C&W; (b) an act, omission or willful misconduct taken pursuant to the expressed directions or written instructions of Owner or was the result of Owner providing C&W incorrect information or failing to disclose a material fact; (c) any injury or death to persons or damages to property caused by the negligent acts or omissions of Owner or any authorized agent of Owner in connection with the Property; (d) any violation by Owner or any authorized agent of Owner of any applicable law; or (e) Owner's negligence or willful misconduct; and (iii) shall not extend to acts of any Cooperating Broker or brokers who are not agents or employees of C&W.

b. Insurance: The following section is intended to replace the INSURANCE REQUIREMENTS Section of the RFQ in its entirety:

INSURANCE REQUIREMENTS

C&W shall procure and maintain for the duration of this contract the following equivalent insurance policies at the limits shown below in order to protect LFUCG against claims for injuries to persons or damages to property which may arise in connection with the performance of the work hereunder by C&W.

Coverage

General Liability

Limits

\$1 million per occurrence; \$2 million in the aggregate
or \$2 million combined single limit

Auto Liability	\$1 million combined and single limit per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$100,000 each accident and disease
Professional (E&O) Liability	\$1 million
Excess/Umbrella Liability	\$10 million per occurrence and in the aggregate

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be included as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG as to C&W's express obligations under the indemnity provisions of the RFQ as modified herein.
- c. The General Liability Policy shall include Premises and Operations coverage unless it is deemed not to apply by LFUCG.
- d. [intentionally omitted].
- e. The Policy shall include Umbrella/Excess Liability coverage in the amount of \$1 million per occurrence, \$1 million aggregate, unless it is deemed not to apply by LFUCG.
- f. [intentionally omitted]
- g. [provision regarding coverage being written by insurers acceptable to LFUCG and in a form acceptable to LFUCG omitted]. If maintained through third party insurers or C&W's wholly owned captive insurance company, insurance placed with insurers with a rating classification of no less than A- and a financial size category of no less than VI, as defined by the most current Best's Key Rating Guide (or equivalent rating agency's guide) shall be deemed automatically acceptable.

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG within fifteen (15) days after such renewal, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE.

Any self-insurance programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage.

Safety and Loss Control

C&W shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement.

Verification of Coverage

C&W agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, including all endorsements.

Right to Review, Audit and Inspect

[intentionally omitted]

DEFAULT

[intentionally omitted]

11. OFAC. Each party represents and warrants to the other that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.
12. Anti-Bribery & Corruption. Each party represents and warrants to the other that it (and any party acting on its behalf) has not, in order to enter into this agreement, offered, promised, authorized or made any payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, kickbacks or other unlawful or improper means of doing business ("Prohibited Activity") and will not engage in Prohibited Activity during the term of this agreement. In the event of any violation of this section, the non-offending party shall be entitled to immediately terminate this agreement and take such other actions as are permitted or required to be taken under law or in equity.
13. Miscellaneous. This agreement shall be governed by the laws of the Commonwealth of Kentucky, without giving effect to principles of conflicts of law. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This agreement shall benefit and be binding upon the parties and their respective successors and assigns. This agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts,

each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

**LEXINGTON FAYETTE URBAN
COUNTY GOVERNMENT**

CUSHMAN & WAKEFIELD U.S., INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Kevin Hughes, Managing Principal
Date: _____

[Schedule of Commissions Follows]

EXHIBIT "D"
SCHEDULE OF COMMISSIONS FOR SALE

Rate: 6% of the total sales price

Time of Payment: The commission shall be paid in full at the time of the closing or transfer of title to the Property, except in the case of an installment purchase contract, in which case the commission shall be paid in full at the time of Closing(s) between Owner and purchaser.

Computation of Total Sales Price: The commission shall be computed in accordance with the above rates based upon the gross sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by purchaser or which purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Owner.

Purchase Option: If Owner grants a purchase option, C&W will be paid a commission at the above rate on the option price as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale, C&W will be paid a commission at the above rate on the total sales price (excluding any amount paid for the option and applied to the sales price).

Broker Regulatory or Statutory Provisions. The following provisions must be included in brokerage agreements in the State of Kentucky:

- C&W appoints **David Kelly, Jeffrey Bender and Seattle Stein** as its designated agent(s) pursuant to this Agreement.
- It is illegal for either party to discriminate against any person because of one's membership in a protected class (e.g., race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status, or any other class protected under Kentucky law).