

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on or as of the 5th day of March, 2010 by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, 200 East Main Street, Lexington, Kentucky 40507 ("LFUCG"), Party of the First Part, and the **EASTERN KENTUCKY UNIVERSITY**, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102 ("EKU"), Party of the Second Part:

WITNESSETH:

1. **PREMISES.** EKU shall have the right to use approximately 7,200 square feet (Health Clinic, "Area A" consisting of approximately 4,100 square feet currently occupied by EKU and subject to an existing lease, and "Area B" consisting of approximately 3,100 square feet) of space in the building located at 1306 Versailles Road, Lexington, Fayette County, Kentucky, together with the improvements and fixtures presently located therein and attached thereto, together with access to unassigned common parking area for patient and employee use and such right-of-way as is necessary for ingress thereto and egress therefrom (said areas combined being hereinafter referred to as the "Premises"), for the purpose of EKU's activities as provided in paragraph 2.

2. **USE:** EKU shall use the Premises for the purpose of providing healthcare and medical services as a Consolidated Health Center Program authorized by Section 330 of the Public Health Services Act.

3. **TERM:** There is presently a lease between the Parties for Area A of the Premises. The Parties understand and agree that this Lease amends the existing lease and that changes to the existing lease will be effective upon execution of this Lease.

However, in order to set forth the Term of this Lease without changing the anniversary date of the existing lease, this Lease shall be effective for a period of one (1) year from April 1, 2010 to March 31, 2011, and shall renew automatically thereafter for six (6) additional periods of one (1) year unless terminated as provided herein.

4. RENT: EKU shall pay \$13.76 per square foot (\$10.80 psf base rent, \$1.66 psf utilities(includes sanitary sewer and stormwater fees), and \$1.30 psf maintenance) annually for the Premises. Rent for Area B of the Premises shall be paid, on a pro rated monthly basis, beginning at the time of execution hereof; base rent for Area A shall be paid, on a monthly basis, beginning April 1, 2012, while the portion of rent for utilities and maintenance shall be paid, on a pro rated monthly basis, beginning at the time of execution hereof. Rent shall be increased at a rate of 2% per year beginning April 1, 2014, and each year thereafter for each yearly term of the lease.

5. TAXES AND FEES: EKU agrees to pay all applicable taxes and assessments against its personal property, and any applicable permit, regulatory and/or license fees. EKU is not responsible for any applicable real property taxes.

6. COMPLIANCE WITH ORDINANCES, STATUTES AND FEDERAL LAWS:

EKU shall comply and cause its employees and agents to comply with all ordinances, statutes, and state and federal laws in connection with the use of the Premises and providing healthcare and medical services as a Consolidated Health Center Program authorized by Section 330 of the Public Health Service Act. If EKU shall fail within seventy-two (72) hours, or the first business day after the seventy-two (72) hour period if that deadline falls on a weekend, legal holiday or other day LFUCG or University is closed for business, after receipt of written notice of any violation by

EKU or its employees or agents of any ordinances, statutes, or state or federal laws, to cure such violation, such failure shall constitute a default.

7. INSPECTIONS: LFUCG shall have the right to inspect the Premises at any time during EKU's normal hours of operation. LFUCG shall have free access to the Premises at all reasonable times for the purpose of examining the same, or to make any alterations or repairs to the Premises that LFUCG deems necessary for its safety or preservation.

8. ALTERATIONS TO THE PREMISES: Any physical improvements or changes in the status of the Premises, including painting, is to be done with the express prior written approval of LFUCG which shall not be unreasonably withheld. Any and all improvements once installed, affixed or located in or on the Premises shall be and remain on the Premises and belong to LFUCG as further consideration of this Lease, provided however that all inventory, furnishings and other equipment installed and paid for by EKU may be removed by EKU upon termination of the Lease if such removal does not damage the Premises.

9. MAINTENANCE OF THE PREMISES:

a. LFUCG shall maintain the exterior of the Premises, including the roof, foundation, and structural portion of the Premises, and the exterior doors and window frames, and shall replace all broken and cracked glass except where such replacement is required by reason of the acts of EKU or its invitees, in which event University shall make such replacements. LFUCG shall make all necessary repairs to the parking areas, service driveways and sidewalks, and shall provide, at its expense, general landscaping maintenance of the Premises, snow and ice removal and the

removal of trash and garbage (but not the placement of such trash and garbage in the appropriate container and location). LFUCG shall further be responsible for keeping the heating, ventilation, air conditioning, plumbing, electrical and like systems in good working order. LFUCG shall continue to provide security monitoring for the facility. EKU shall provide janitorial services for the interior of the Premises.

b. EKU shall make any minor repairs as may be necessary for keeping and maintaining the interior of the Premises in good order, condition and repair. Excepted from this are repairs made necessary by reason of damage due to fire or other casualty covered by standard fire and extended coverage insurance.

c. EKU shall use common areas in such a manner so as not to interfere with the use of the areas by other occupants of 1306 Versailles Road.

10. SECURITY: EKU shall have adequate procedures in place to ensure that outside doors are secure at the end of the business day and that keys to outside doors are distributed to personnel only as necessary. EKU may, at its expense, install a keypad and card swipe system for access to its occupied space. LFUCG shall be granted access to the system if such a system is installed.

11. INDEMNIFICATION AND INSURANCE:

a. Indemnification – EKU is subject to the jurisdiction of the Board of Claims, KRS 44.070-44.160, and does not intend for any provision of this Lease to constitute waiver of any immunity from suit or liability that it may have by operation of law. EKU agrees, to the extent permitted by law, to indemnify, defend and hold harmless LFUCG and its agents, officials and employees, from any and all claims, liabilities, loss, damage, and defense costs resulting from EKU's or its invitees' use of the Premises.

The indemnification to LFUCG, to the extent permitted by law, includes claims related to medical treatment, privacy, and storage, maintenance and care of medical records by EKU. LFUCG shall not be liable for any loss or damage to persons or property of EKU or others located on the Premises or the loss of or the damage to any property of EKU or others by theft or otherwise from the Premises, except to the extent such injury or damage results from a negligent or willful act or failure to act of LFUCG. LFUCG shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling material, steam, gas, electricity, water, rain, snow, leaks from any part of the Premises, pipes, appliances or plumbing works, or any other cause of any nature, except to the extent such injury or damage results from a negligent or willful act or failure to act of LFUCG. Nothing herein shall be construed to waive or eliminate LFUCG's defense of sovereign immunity. Any property of University kept for storage at the Premises shall be so kept or stored at the risk of EKU only.

b. Insurance – EKU shall procure and maintain, at its cost, throughout the term of this Lease, and annually for any extension thereof, Commercial General Liability Insurance, including Premises and Operations Liability and Fire Legal Liability for said premises. Liability limits should be in an amount not less than \$1,000,000 per occurrence with an aggregate of not less than \$2,000,000. Said insurance company shall be authorized to do business in the Commonwealth of Kentucky, with a Best's Key Rating of no less than Excellent (A or A-) and a financial size category of no less than VIII. EKU shall furnish to LFUCG a certificate of insurance and make available for inspection a copy of the policy.

12. HAZARDOUS MATERIALS: EKU will not discharge, release, dispose of or

deposit on the Premises any waste, including any pollutants, effluents or hazardous materials ("Hazardous Materials"), in violation of any federal, state or local law and regulation. Any Hazardous Materials generated by EKU will be removed in the manner required by law from the Premises and disposed of in accordance with federal, state and local laws and regulations. If at any time EKU fails to comply with the terms of this Section, LFUCG may remedy such default and EKU will fully reimburse Landlord for any cost or expense it incurs in so acting within ten (10) days of receipt of written notice from LFUCG.

13. TERMINATION: EKU may terminate the Lease upon one hundred eighty (180) days written notice to Government. LFUCG may terminate the Lease only in the event of default hereunder upon fifteen (15) days' written notice to EKU.

14. SIGNS: EKU shall not allow its name or any advertisement to be applied on any part of the Premises. However, EKU will be allowed to place at its expense its name or sign on the grounds outside of the building, provided advanced written approval of LFUCG is obtained. Such approval shall not be unreasonably withheld.

15. LEASE NOT ASSIGNABLE: This Lease is not assignable and no portion of the Premises may be sublet by EKU.

16. PROPERTY ON PREMISES IS RESPONSIBILITY OF ORGANIZATION: All personal property which may be kept upon the Premises shall be at the sole risk and responsibility of EKU.

17. DESTRUCTION OF PREMISES: If the Premises should be destroyed or damaged by fire or other casualty covered by LFUCG's policy of fire and extended coverage insurance, LFUCG shall, with due diligence, make repairs or restoration at its

expense; provided, however, that should damage to the extent of fifty percent (50%) or more of the value thereof occur, then LFUCG may at its option cancel this Lease instead of making the necessary repairs or restoration; and, provided further, that if the Premises are damaged to such an extent that repairs or restoration cannot be effected within one hundred twenty (120) days, either party shall have the right to cancel this Lease by giving the other party notice in writing within thirty (30) days from the date such damage occurred. In the event no such notice is given, or if notice be waived in writing by the parties, LFUCG shall proceed with due diligence to complete the restoration of the Premises. In the event of partial destruction or damage whereby EKU shall be deprived of the use or occupancy of only a portion of said Premises, then minimum rent shall be equitably apportioned according to the area of the Premises which is usable by EKU until such time as the Premises shall be repaired or restored. LFUCG shall commence the repair and reconstruction of the Premises promptly after it receives the proceeds of insurance in connection with such partial loss. Should the destruction or damage be of such extent that the Premises are entirely untenable, then the Lease shall automatically terminate and a new lease may be entered into, by agreement of the parties once the Premises are restored or repaired and are once again tenable, unless the Lease has been terminated as provided herein.

18. QUIET ENJOYMENT: LFUCG hereby covenants and agrees that if EKU shall perform all the covenants and agreements herein stipulated to be performed on EKU's part, EKU shall at all times during the Lease term and any extensions or renewals thereof have the peaceable and quite enjoyment and possession of the Premises without any manner of, or hindrance from LFUCG or any person or persons

lawfully claiming the Premises.

19. VACATION OF PREMISES: EKU shall surrender to LFUCG possession of the Premises upon the expiration or termination of the Lease in as good a condition and repair as the Premises shall be at the commencement of said terms (the elements and ordinary wear and deterioration excepted) and deliver the keys to LFUCG.

20. MEMORANDUM OF LEASE: The Lease, or a memorandum describing the property herein demised, stating the term of the Lease, and referring to this Lease, may be recorded by either party, but is not required.

21. NOTICES: Any notice or consent required to be given by or on behalf of either party upon the other shall be in writing and shall be given by hand delivering or mailing such notice or consent. If mailed, such notice shall be mailed via certified mail, return receipt restricted.

Notice shall be sent to EKU at the following:

Dr. David D. Gale, Dean
College of Health Sciences
Eastern Kentucky University
521 Lancaster Avenue
Richmond, Kentucky 40475

Notice shall be sent to LFUCG at the following:

Lexington-Fayette Urban County Government
Attn: Commissioner of General Services
200 East Main Street
Lexington, Kentucky 40507

22. WAIVER: No waiver of any condition of legal right or remedy shall be implied by the failure of either party to declare a forfeiture, or for any other reason, and no waiver of condition or covenant shall be valid unless it be in writing signed by party

so waiving. The waiver of a breach by either party of any condition shall not excuse, or be claimed to excuse, a future breach of the same condition or covenant or any other condition or covenant.

23. EMINENT DOMAIN: In the event that the Premises or any part thereof shall at any time after the execution of the Lease be taken for public or quasi-public use, or condemned under eminent domain, EKU shall not be entitled to claim or have paid to it any compensation or damages whatsoever for or on account of any loss, injury, damage or taking of any right, interest or estate of EKU, and EKU hereby relinquishes to LFUCG any rights to any such damages. Should all of the Premises be taken by eminent domain, then this Lease shall be deemed terminated, and EKU shall be entitled to no damages or any consideration by reason of such taking.

24. INTERPRETATION: If any clause, sentence, paragraph or part of the Lease shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Lease, but be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered, and in all other respects said Lease shall continue in full force and effect. This Lease, having been negotiated in good faith between the parties with advice of their respective counsel, shall not be construed against one party or the other.

25. INTERPRETATION AS PARTNERSHIP PROHIBITED: It is understood and agreed that nothing herein contained shall be construed in any way to constitute a partnership between the parties.

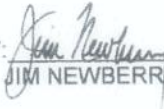
26. NON-DISCRIMINATION: EKU will not discriminate against any employee

or applicant for employment because of race, color, religion, sex, age, national origin or handicap and will state in all solicitations or advertisements for employees placed by or on behalf of EKU that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age, national origin or handicap.

27. ENTIRE AGREEMENT: This Lease contains the entire agreement of the parties with respect to EKU's occupancy and lease of the Premises, and there are no other promises or conditions in any other agreement either oral or written. The Lease may be amended only in writing and only if such writing is signed by both parties. The parties acknowledge that any amendment to the Lease must be approved by the Lexington-Fayette Urban County Council.

IN WITNESS WHEREOF, the parties hereto have set their hands the date first above written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: 
JIM NEWBERRY, MAYOR

EASTERN KENTUCKY UNIVERSITY

BY: 
Dr. Gerald J. Pogatschnik
Associate Vice President for Research