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AMENDMENT TO LEASE AGREEMENT (CONTRACT #23-2010)

THIS AMENDMENT TO LEASE AGREEMENT, made and entered into on the 17<sup>th</sup> day of February, 2017, by and between LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, hereinafter referred to as "Owner", and EASTERN KENTUCKY UNIVERSITY, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, Owner and Tenant entered into a Lease Agreement for approximately 7,200 square feet of space located at 1306 Versailles Road, Lexington, Kentucky (hereinafter the "Versailles Road Campus"); and,

WHEREAS, Lease Agreement was entered into on the 5<sup>th</sup> day of March, 2010, (R 67-2010) and a copy of the agreement is attached, Labeled Exhibit "A", and incorporated by reference; and,

WHEREAS, Lease Agreement is set to expire on March 31, 2017, and Tenant has expressed a desire to continue occupying the facility under the terms and conditions provided in the agreement; and,

WHEREAS, Owner has the desire for Tenant to continue occupying said space;

NOW, THEREFORE, Owner and Tenant hereby agree that the aforesaid Lease Agreement shall be amended as follows:

1. The term of the Lease Agreement shall be extended for a period of one (1) year, to expire March 31, 2018.
2. The Lease Agreement shall automatically renew for two (2) additional periods of one (1) year each thereafter.
3. Tenant may terminate the lease during the renewal periods provided for in Section (2) of this Amendment to Lease Agreement by providing ninety (90) days advance written notification or thirty (30) days advance written notification if the termination is due to a lack of grant funding.
4. The rental rate for the premises, beginning April 1, 2017, and continuing until March 31, 2020 or until the Lease shall terminate, whichever may come first, shall be \$8,764.08 per month.
5. All other terms and provisions of the aforesaid Lease Agreement shall remain unchanged and are hereby reaffirmed, ratified, adopted, and incorporated by reference into this Amendment to Lease Agreement. The aforesaid Lease Agreement and this Amendment to Agreement may not be modified or amended in any manner except by an instrument in writing executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease Agreement as the day and year first written above.

OWNER:  
LEXINGTON FAYETTE URBAN  
COUNTY GOVERNMENT

BY: \_\_\_\_\_

Jim Gray, MAYOR

ATTEST: \_\_\_\_\_

Clerk of Urban County Council

TENANT:  
EASTERN KENTUCKY UNIVERSITY

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

Signature

Allen Sizemore, Asst. Director  
Printed Name, Title

# EXHIBIT A

R 67-2010

## LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on or as of the 5<sup>th</sup> 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 thereon and attached thereto together with access to unassigned ramp or parking area for patient and employee use and such right of way as is necessary to ingress thereon and egress therefrom, said areas combined being hereinafter referred to as the Premises for the purposes 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 130 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 term is terminated as provided herein.

4. RENT. EKV 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, 2010, 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 3% per year beginning April 1, 2011 and each year thereafter for each year's term of the lease.

5. TAXES. EKV shall be responsible for all applicable taxes and assessments, including personal property tax and any applicable permit, registration and/or miscellaneous fees, and shall be responsible for all applicable real property taxes.

6. COMPLIANCE. EKV shall be responsible for ensuring that EKV and its employees shall comply with all applicable 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 33.1 of the Public Health Service Act. If EKV shall fail within seventy-two (72) hours of the first business day after the seventy-two (72) hour period of that deadline falls on a weekend, legal holiday or other day (HOC) of the 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  
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.

#### 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, and the placement of such trash and garbage in the appropriate container and location. LHJCC shall further be responsible for keeping the heating, ventilation, air conditioning, plumbing, electrical, and like systems in good working order. LHJCC shall continue to provide security monitoring for the facility. EKV shall provide janitorial services for the interior of the Premises.

b. EKV 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. EKV shall use common areas in such a manner so as not to interfere with the use of the areas by other occupants of 1106 Versailles Road.

10. SECURITY - EKV shall have adequate procedures in place to ensure that its doors are secure at the end of the business day and that keys for outside doors are distributed to personnel only as necessary. EKV shall at its expense install a keypad and card swipe system for the entrance to the building. LHJCC shall be granted access to the system and the system shall be installed.

#### 11. INDEMNIFICATION AND INSURANCE

a. Indemnification - EKV is subject to the jurisdiction of the Board of Claims, KRS 44.070-44.150, and does not intend for any provision of this Lease to constitute waiver or any immunity from, or liability that it may have by operation of law. EKV agrees, to the extent permitted by law, to indemnify, defend and hold harmless LHJCC and its agents, officials and employees, from any and all claims, liabilities, loss, damage, and defense costs, resulting from EKV'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 EKV. LFUCG shall not be liable for any loss or damage to persons or property of EKV or others located on the Premises or the loss of or the damage to any property of EKV 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 kept or stored at the risk of EKV only.

(c) Insurance. EKV shall procure and maintain, at its cost, throughout the term of this Lease, and annuity for any extensions thereof, commercial general liability insurance, including premises and operations liability and fire legal liability for said premises. Liability limits shall not be an amount, but 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 not less than Excellent (A or X) and a financial size category of not less than VIII. EKV shall furnish to LFUCG a certificate of insurance and make available for inspection a copy of the policy.

(d) HAZARDOUS MATERIALS. EKV 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 EKV 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 EKV fails to comply with the terms of this Section, LFUCG may remedy such default and EKV 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. EKV 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 EKV.

14. SIGNS. EKV shall not allow its name or any advertisement to be applied on any part of the Premises. However, EKV will be allowed to place at its expense its name and sign on the grounds outside of the building, provided, advance 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 EKV.

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 EKV.

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 to 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 or in connection with such partial loss. Should the destruction or damage be of such extent that the Premises are entirely untenable then the Lease and contract shall terminate and a new lease may be entered into by agreement of the parties. If the Premises are restored or repaired and are once again tenable unless the Lease has been terminated as provided herein.

8. "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 as a tenant during the Lease term and any extensions or renewals thereof have the peaceable and quiet enjoyment and possession of the Premises without any interference or disturbance from LFUCG or any person or persons



lawfully occupying the Premises.

19. **VACATION OF PREMISES.** EKV 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 waived, such notice shall be mailed via certified mail, return receipt requested.

Notice shall be sent to EKV at the following:

Dr. David L. Baer, Chair  
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 40501

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

so waiving. The waiver of a breach by either party of any condition shall not excuse or be deemed 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 concerned under eminent domain, EKV 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 EKV, and EKV hereby relinquishes to LFUGG any rights to any such damages. Should all or the Premises be taken by eminent domain, then this Lease shall be deemed terminated, and EKV 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 adjudication shall not affect, impair or invalidate the remainder of this Lease but the contract shall operate to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such adjudication 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.** EKV will not discriminate against any employee

of 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 EKV 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 EKV'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

  
JIM NEWBERRY, MAYOR

EASTERN KENTUCKY UNIVERSITY

  
Dr. Gerald J. Pogatschnik  
Associate Vice President for Research