

# FCR 16

Office of the President  
June 22, 2004

Members, Board of Trustees:

## ACQUISITION OF REAL PROPERTY REFERRED TO AS THE LEXEL BUILDING AT COLDSTREAM IN FAYETTE COUNTY, KENTUCKY

Recommendation: that the Board of Trustees authorize the Executive Vice President for Finance and Administration to negotiate the acquisition of the Lexel Building on land already owned by the University of Kentucky at its Coldstream Research Campus for a purchase price not to exceed \$9.6 million and also not to exceed the appraised fair market value as based upon two independent appraisals; further, that the Executive Vice President for Finance and Administration be authorized to execute any and all documents required for such purchase; further, that the Board of Trustees approve a Resolution expressing its official intent to issue bonds, and stating that the proceeds of the bonds will be used to reimburse any payments of the purchase price made prior to the issuance of the bonds.

Background: The Lexel Building on the UK Coldstream Research Campus is being offered for sale by owners John Morris and Rex Sheldon, who acquired the facility in 1997. In February 2004, they paid for an appraisal of the facility which estimated the value at \$14 million. Their original proposal was to sell it to the University for \$11 million. After seven weeks of discussion and negotiation, we are at the point where the price to acquire the building is \$9.6 million.

In addition to manufacturing, prototyping, and storage space as well as a variety of sophisticated mechanical systems well suited to research and development, the 163,000 square feet facility contains 12,000 square feet of cleanroom and over 25,000 square feet of office space. Lexel Imaging has a lease on the facility that continues until April 1, 2005. Their market has declined, and they wish to extend the lease for five years occupying approximately 50 percent of the space with options for lease extensions in the future. The company employs 105 people in high-technology jobs and is owned by an Atlanta company that has looked at other sites outside of Lexington to which they might move their operations.

In addition to preserving over 100 jobs, the acquisition of the Lexel Building provides a unique opportunity for the University to place research programs and centers at the Coldstream Research Campus at an attractive cost. This comes at a time when space and budgets are major constraints for the central campus to otherwise provide for these needs. Coldstream will also use the facility to house projects for companies that want to be at the Research Campus in order to work closely with our research personnel. Possible projects include an engineering research and a hydrogen fuel project, Coldstream administrative office, and current and future graduates from ASTeCC in need of expansion space. In addition, existing technology firms such as a medical device manufacturer could make good use of part or all of the building over time. With the Center for Pharmaceutical Science and Technology opening in 2005, this building could give us a facility to begin marketing to their corporate partners.

Pursuant to the income tax regulations of the Internal Revenue Service, in order for expenditures made for a public project prior to the issuance of revenue bonds to be reimbursed upon the issuance of such bonds, it is necessary that the issuer express its official intent to issue such bonds or to have such bonds issued on its behalf and to reimburse such expenditures made prior to the issuance of such bonds.

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Action taken:     Approved     Disapproved     Other \_\_\_\_\_

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF KENTUCKY DECLARING OFFICIAL INTENT WITH RESPECT TO REIMBURSEMENT OF TEMPORARY ADVANCES MADE FOR CAPITAL EXPENDITURES TO BE MADE FROM SUBSEQUENT BORROWINGS; AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, Treasury Regulations § 1.150-2 (the "Reimbursement Regulations"), issued pursuant to § 150 of the Internal Revenue Code of 1986, as amended, (the "Code") prescribes certain requirements by which proceeds of tax-exempt bonds, notes, certificates or other obligations included in the meaning of "bonds" under § 150 of the Code ("Obligations") used to reimburse advances made for Capital Expenditures (as hereinafter defined) paid before the issuance of such Obligations may be deemed "spent" for purposes of §§ 103 and 141 to 150 of the Code and therefore, not further subject to any other requirements or restrictions under those sections of the Code; and

WHEREAS, such Reimbursement Regulations require that the Borrower (as hereinafter defined) make a Declaration of Official Intent (as hereinafter defined) to reimburse any Capital Expenditure paid prior to the issuance of the Obligations intended to fund such Capital Expenditure and require that such Declaration of Official Intent be made no later than sixty (60) days after payment of the Capital Expenditure and further require that the Allocation (as hereinafter defined) of the proceeds of such Obligations to reimburse such Capital Expenditures occur no later than eighteen (18) months after the later of the date the Capital Expenditure was paid or the date the property acquired with the Capital Expenditure was placed in service, except that any such Allocation must be made no later than three years after such Capital Expenditure was paid; and

WHEREAS, the University of Kentucky (the "Borrower") wishes to ensure compliance with the Reimbursement Regulations;

NOW, THEREFORE, be it resolved as follows by the Board of Trustees of the University of Kentucky as follows:

SECTION 1. Definitions. The following definitions apply to the terms used herein:

"*Allocation*" means written evidence that proceeds of Obligations issued subsequent to the payment of a Capital Expenditure are to effect the reimbursement of the Borrower for such payments.

"*Borrower*" means the University of Kentucky.

"*Capital Expenditures*" means any expense for an item that is properly depreciable or amortizable or is otherwise treated as a capital expenditure for purposes of the Code, as well as any costs of issuing Reimbursement Bonds.

"*Declaration of Official Intent*" means a written declaration that the Borrower intends to fund a Capital Expenditure with an issue of Reimbursement Bonds and reasonably expects to be reimbursed from the proceeds of such an issue.

"*Reimbursement*" means the restoration to the Borrower of money temporarily advanced from other funds of the Borrower to pay for Capital Expenditures before the issuance of Obligations intended to fund such Capital Expenditures. "To reimburse" means to make such a restoration.

"*Reimbursement Bonds*" means Obligations that are issued to reimburse the Borrower for Capital Expenditures previously paid by or for the Borrower.

"*Reimbursement Regulations*" means Treasury Regulations § 1.150-2 and any amendments thereto or superseding regulations, whether in proposed, temporary or final form, as applicable, prescribing conditions under which the proceeds of Obligations when allocated or applied to a reimbursement will be treated as "spent" for purposes of §§ 103 and 141 to 150 of the Code.

SECTION 2. Declaration of Official Intent.

(a) The Borrower declares that it reasonably expects that the Capital Expenditures described in Section (b), which will be paid prior to the issuance of any Obligations intended to fund such Capital Expenditures, will be reimbursed with the proceeds of Obligations, representing a borrowing by the Borrower in the maximum principal amount for such reimbursements, funding of a debt service reserve and payment of costs of issuance of approximately \$10,000,000; and

(b) The Capital Expenditures to be reimbursed are to be used for the purchase of the Lexel Building on the UK Coldstream Research Campus.

SECTION 3. Reasonable Expectations. The Borrower does not expect any other funds (including the money advanced to make the Capital Expenditures that are to be reimbursed), to be reserved, allocated on a long-term basis, or otherwise set aside by the Borrower or any other entity affiliated with the Borrower, with respect to the Capital Expenditures described in 2(b).

SECTION 4. Effective Date. This Resolution shall be effective from and after its date of adoption.

Adopted at a duly convened meeting of the Board of Trustees of the University of Kentucky on the 22nd day of June, 2004.

UNIVERSITY OF KENTUCKY

Attest:

By: \_\_\_\_\_  
Chairman, Board of Trustees

By: \_\_\_\_\_  
Secretary

CERTIFICATE

I, the undersigned Secretary of the Board of Trustees of the University of Kentucky, certify that the foregoing is a true and correct copy of a Resolution passed at a duly convened meeting of the Board of Trustees of the University of Kentucky held on the 22nd day of June, 2004, at which a quorum was present, and that said Resolution has not been amended, modified, revoked or repealed and is now in full force and effect, all as appears from the official records of the Board of Trustees of the University of Kentucky in my custody and under my control.

Witness my hand as Secretary of the Board of Trustees of the University of Kentucky this 22nd day of June, 2004.

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Secretary

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