

FCR 4

Office of the President
March 10, 2009

Members, Board of Trustees:

RESOLUTION APPROVING A LEASE PURCHASE AGREEMENT UNDER THE
UNIVERSITY'S GENERAL RECEIPTS BOND RESOLUTION

Recommendation: that the Board of Trustees approve the attached Series Resolution for the lease/purchase financing of the Samaritan Hospital properties under the University's General Receipts Bond Resolution.

Background: The Executive Committee of the Board of Trustees, at a special meeting held on June 29, 2007, approved the lease purchase financing of one or more borrowings in an aggregate amount not to exceed \$70 million to complete the purchase of Samaritan Hospital.

At the time of the purchase, July 1, 2007, the owner of the properties, Ventas Real Estate Investment Trust, did not want to immediately sell the property to the university due to tax consequences. Instead, at that time, it entered into a lease purchase agreement with the university for the sale of the property. Additionally, at the same time, Ventas and the university entered into a put/call agreement for the sale of the property to the university at a date no later than February 28, 2012 at a fixed price of \$35,000,000. Ventas has exercised its put option to the university with an effective date of February 28, 2009.

The university requested bids for the lease purchase financing of the Samaritan properties to provide funding to pay off Ventas. The winning bid, provided by the Kentucky Association of Counties Leasing Trust, provides financing at a rate of approximately 4.39 percent with a term of 20 years. This favorable bid contemplated the lease purchase taking place under the university's General Bond Resolution thereby being secured under the university's general receipts pledge. This resolution affirms the Board's intent that this lease purchase agreement be included within the university's general receipts trust indenture and pledge.

Action taken: Approved Disapproved Other _____

RESOLUTION NO. _____

A RESOLUTION APPROVING A LEASE AGREEMENT HAVING AN AGGREGATE PRINCIPAL COMPONENT OF LEASE RENTAL PAYMENTS OF NO MORE THAN \$35,000,000 WITH THE KENTUCKY ASSOCIATION OF COUNTIES LEASING TRUST FOR THE FINANCING OF A PROJECT AND AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS RELATED TO SUCH LEASE.

WHEREAS, the University of Kentucky (herein called the "University"), a public body corporate and an educational institution and agency of the Commonwealth of Kentucky, by resolution adopted by the Board of Trustees of the University (the "Governing Body") on September 20, 2005 (herein called the "General Bond Resolution"), and by a Trust Agreement, dated as of November 1, 2005, as supplemented (herein called the "Trust Agreement"), comprised in part of the General Bond Resolution, has provided for the issuance from time to time of Obligations (as defined in the Trust Agreement) of the University secured by a pledge of the University's "General Receipts" (as defined in the Trust Agreement), each such issue to be authorized by a Series Resolution, as required by the Trust Agreement; and

WHEREAS, the University has the power, pursuant to Section 65.940 et seq. of the Kentucky Revised Statutes and H.B.406 of the General Assembly of the Commonwealth of Kentucky, 2008 Regular Session, as enacted and vetoed in part, as amended by H.B. 410, H.B. 514 and H.B. 608 of the General Assembly of the Commonwealth of Kentucky, 2008 Regular Session, as enacted and vetoed in part (collectively, the "Act"), to enter into lease agreements with the option to purchase in order to provide for the use of property for public purposes;

WHEREAS, the Governing Body has previously determined, and hereby further determines, that the University is in need of the Project, as defined in the Lease hereinafter described;

WHEREAS, the Governing Body has determined and hereby determines that it is in the best interests of the University that the University and the Kentucky Association of Counties Leasing Trust (the "Lessor") enter into a Lease Agreement (the "Lease") for the leasing by the University from the Lessor of the Project;

WHEREAS, the Lease constitutes an "Additional Obligation Instrument," as defined in the Trust Agreement, to be secured by the pledges set forth in the Trust Agreement, and therefore constitutes an Obligation under the terms of the Trust Agreement, and the University has, or will have in all respects complied with the provisions of the Trust Agreement so as to be entitled to execute and deliver the Lease as an Obligation thereunder;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE UNIVERSITY OF KENTUCKY, AS FOLLOWS:

SECTION 1. Definitions and Interpretations. All words and terms defined in Section 1 of the General Bond Resolution and all interpretations therein provided shall have the same meanings, respectively, and be subject to the same interpretations as therein provided where used in this Resolution, unless the context or use clearly indicates another or different meaning or intent and the terms "hereof," "hereby," "hereto," "herein," and "hereunder," and similar terms, mean this Resolution.

SECTION 2. Authority. This Resolution is adopted pursuant to the General Bond Resolution, the Trust Agreement, and the Act.

SECTION 3. Authorization, Designation and Purpose of Lease. The Lessee hereby approves the Lease and all Collateral Documents, as defined in the Lease, each in substantially the form presented to this Governing Body. It is hereby found and determined that the Project identified in the Lease is public property to be used for public purposes. It is further determined that it is necessary and desirable and in the best interests of the Lessee to enter into the Lease for the purposes therein specified, and the execution and delivery of the Lease and all representations, certifications and other matters contained in the Closing Memorandum with respect to the Lease, or as may be required by the Lessor prior to delivery of the Lease, are hereby approved, ratified and confirmed. The Chairman, Executive Vice President for Finance and Treasurer of the Lessee are hereby authorized to execute the Lease, together with such other agreements or certifications which may be necessary to accomplish the transaction contemplated by the Lease.

SECTION 4. Terms and Provisions Applicable to the Lease.

(a) Form, Numbering and Designation. The Lease shall be substantially in the form presented to this meeting of the Governing Body, with such changes as may be approved by the Fiscal Officer, approval of which shall be evidenced by the execution thereof.

(b) Denomination and Dates. The Lease shall have principal components of lease rental payments that are due at lease annually and have a final maturity that is no later than [twenty years] from the date the Lease commences.

(c) Interest. The Lease shall bear interest from its commencement date payable on dates approved by the Fiscal Officer, beginning on a date approved by the Fiscal Officer, at the rate or rates per annum determined pursuant to Section 5 hereof.

(d) Maturities. The principal components of lease rental payments shall be due on such dates, in the years and in the amounts set forth in the maturity schedule approved by the Fiscal Officer pursuant to Section 5 hereof.

(e) Redemption Terms and Prices. The Lease shall be subject to optional and mandatory prepayment (redemption) on such dates and terms as set forth in the Lease and approved by the Fiscal Officer.

(f) Place of Payment and Paying Agents. The principal, interest and any redemption premium on registered Lease shall be payable, as provided in the Trust Agreement and the Lease.

(g) Execution. The Lease shall be executed in the manner provided in this Resolution.

SECTION 5. Award and Sale of Lease. The Lease shall be entered into with the Kentucky Association of Counties Leasing Trust.

SECTION 6. Allocation of Proceeds of Lease. All of the proceeds from the Lease and other lawfully available funds of the University shall be received and receipted for by the Fiscal Officer and shall be deposited and allocated as set forth in the Lease.

SECTION 7. Additional Covenants with Respect to Internal Revenue Code of 1986, as Amended. This Board hereby covenants for and on behalf of the University, that it will restrict the use of the proceeds of the Lease in such manner and to such extent, if any, and take such other actions as may be necessary, in view of reasonable expectations at the time of issuance of the Lease, so that the Lease will not constitute an obligation the interest on which is subject to federal income taxation or "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations prescribed under such Sections. The Fiscal Officer or any other officer of the University having responsibility with respect to the Lease is hereby authorized and directed to give an appropriate certificate for inclusion in the transcript of proceedings with respect to the Lease, setting forth the facts, estimates and reasonable expectations pertinent under said Sections 103(b)(2) and 148 of the Code and an election, if appropriate, with respect to Section 148(f)(4)(B)(IV)(V) of the Code. The Fiscal Officer is hereby authorized and directed to create a Rebate Account (which shall be held by either the University or the Trustee, at the discretion of the Fiscal Officer) if the Fiscal Officer determines such account is necessary so that the University complies with the rules concerning "rebate" as set forth in the Code, as they apply to the Lease.

SECTION 8. Open Meetings. This Board hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 9. Further Authorization. That the proper and appropriate officers of the Board and of the University, to the extent authorized by law, are hereby authorized to execute and deliver the closing certificates, if any, with such modifications thereto as may be required by the Commission with respect to the Financing Agreement or by the purchasers of the Lease and approved by special bond counsel to the University as well as such other documents, certificates and statements as may be so required and so approved in connection with sale and delivery of the Lease.

SECTION 10. Provisions in conflict are Repealed. All resolutions or parts thereof in conflict with the provisions of this Resolution are hereby rescinded to the extent of such conflict.

SECTION 11. Effective Date. This resolution shall take effect from and after its passage.

Adopted: March 10, 2009

Chairman, Board of Trustees
University of Kentucky

Attest:

Assistant Secretary, Board of Trustees

(SEAL)