

# FCR 10

Office of the President  
June 22, 2004

Members, Board of Trustees:

RESOLUTION OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF KENTUCKY ("STATE AGENCY") APPROVING A FINANCING AGREEMENT AMONG THE STATE AGENCY, THE KENTUCKY ASSET/LIABILITY COMMISSION, AND THE FINANCE AND ADMINISTRATION CABINET OF THE COMMONWEALTH OF KENTUCKY FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR AN AUTHORIZED PROJECT IN ANTICIPATION OF THE ISSUANCE OF BONDS TO PROVIDE PERMANENT FINANCING FOR SAID PROJECT

Recommendation: that the Board of Trustees adopt the Resolution attached hereto approving a financing agreement among the University of Kentucky, the Kentucky Asset/Liability Commission, and the Finance and Administration Cabinet, for the purpose of providing interim financing for the following educational building projects: (1) Parking and (2) Infrastructure Projects, including (a) Replace Central Facilities Management Project, (b) Replace Steam and Condensate Pipe, (c) Improve Central Heating Plan, and (d) Replace High Voltage Wiring.

Background: The 2003 General Assembly authorized the issuance of a pool of revenue bonds to finance projects approved by the Council on Postsecondary Education. The Council on Postsecondary Education has approved the construction projects listed above. The attached resolution (a) requests that the Kentucky Asset/Liability Commission issue notes for the purpose of providing interim (short-term) financing for the projects, (b) authorizes the execution and delivery of a financing agreement necessary to implement the financing for the projects, and (c) authorizes the Chairman to execute, acknowledge, and deliver, on behalf of the Board, the financing agreement.

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

**FINANCING AGREEMENT**  
(Agency Bonds)

by and between

KENTUCKY ASSET/LIABILITY COMMISSION

and

FINANCE AND ADMINISTRATION CABINET

OF THE COMMONWEALTH OF KENTUCKY

and

UNIVERSITY OF KENTUCKY

Dated as of May 1, 2004

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THIS FINANCING AGREEMENT, made and entered into as of the date shown on the cover page hereto, by and among the KENTUCKY ASSET/LIABILITY COMMISSION (hereinafter sometimes referred to as the "Commission"), the FINANCE AND ADMINISTRATION CABINET OF THE COMMONWEALTH OF KENTUCKY, a department and agency of the Commonwealth of Kentucky (hereinafter sometimes referred to as the "Cabinet") and the STATE AGENCY identified on the cover page hereto (the "State Agency").

WITNESSETH

THAT WHEREAS, the State Agency identified on the cover to this Financing Agreement constitutes a "State Agency" within the meaning and application of Sections 56.440, et seq., of the Kentucky Revised Statutes and the Finance and Administration Cabinet of the Commonwealth of Kentucky constitutes the "Cabinet" within the meaning of Section 56.8605 of the Kentucky Revised Statutes; and

WHEREAS, the Cabinet is authorized pursuant to the Act, as hereinafter defined, to take, acquire and hold property and the State Agency, to the extent described herein, is authorized to issue and sell revenue bonds, and the Commission is authorized to issue Project Notes, as defined in the Act, in anticipation of the issuance of such bonds in order to provide interim financing for projects and to carry out proper public purposes; and

WHEREAS, the State Agency has determined to issue revenue bonds, as further described herein, and the State Agency has requested and authorized the Commission to issue Project Notes for the Project in anticipation of the issuance of such bonds; and

WHEREAS, the State Agency will enter into this Financing Agreement to provide (i) revenues for amortization of such Project Notes, (ii) for the issuance of the Bonds for the payment of the Project Notes which have not been amortized and (iii) interim financing for the Project by issuance of the Project Notes by the Commission; and

WHEREAS, in order to provide revenues to reimburse the Commission for its commitment to amortize the Project Notes, which are to be issued for purposes of providing funds for acquisition of the Project, it is necessary and appropriate that a Financing Agreement in respect of the Project be entered into by and between the Commission, the State Agency and the Cabinet;

NOW, THEREFORE, PURSUANT TO THE STATUTORY AUTHORITY CITED IN THE PREAMBLES TO THIS FINANCING AGREEMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED BY BOTH PARTIES, AND IN FURTHER CONSIDERATION OF THE PREMISES, THE COMMISSION, THE STATE AGENCY AND THE CABINET DO HEREBY COVENANT AND AGREE, EACH WITH THE OTHER, AS FOLLOWS:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.01. As used in this Financing Agreement, unless the context requires otherwise:

"Act" means Sections 56.860, et. seq. of the Kentucky Revised Statues.

"Additional Payments" means additional payments as set forth in Section 5.06 hereof.

"Bond Payment Fund" means the fund to be created by the Bond Resolution for the payment of the principal of, interest on, and premium, if any, on the Bonds.

"Bond Resolution" means the Bond Resolution or similar authorizing instrument to be adopted by the State Agency authorizing the issuance of the Bonds.

"Bonds" means Bonds as defined in the Indenture.

"Budget Act" means H.B. 269 of the General Assembly of the Commonwealth of Kentucky, 2003 Regular Session.

"Cabinet" means the Finance and Administration Cabinet of the Commonwealth.

"Commission" means the Kentucky Asset/Liability Commission.

"Commonwealth" means the Commonwealth of Kentucky.

"Credit Facility" means Credit Facility as defined in the Indenture.

"Credit Facility Agreement" means Credit Facility Agreement as defined in the Indenture.

"Credit Facility Obligations" means obligations of the Commission under the Credit Facility Agreement, including without limitation, obligations to reimburse the Credit Facility Provider for drawings under the Credit Facility.

"Credit Facility Provider" means Credit Facility Provider as defined in the Indenture.

"Financing Expenses" means all costs associated with the financing of the Projects, as may be determined by the Cabinet, other than amounts payable as interest, Credit Facility Provider fees, Liquidity Facility Provider fees and Remarketing Agent fees hereunder, including, but not limited to, fees of the Trustee, Registrar and Paying Agents and unamortized Costs of Issuance.

"Financing Agreement" means this Financing Agreement, dated as of the date on the cover page hereto, by which interim financing for the Project is provided to the State Agency by the Commission.

"Financing Payments" means the payments required to be made by the Cabinet to the Commission pursuant to Sections 5.01, 5.02 and 5.04 of this Financing Agreement.

"Fiscal Year" means any period of twelve (12) months commencing July 1 of any year and ending June 30 of the ensuing year.

"Indenture" means the Trust Indenture dated as of June 1, 2002, between the Commission and the Trustee.

"KRS" means the Kentucky Revised Statutes of the Commonwealth of Kentucky as the same are in full force and effect at the date of the adoption of the Indenture, and any future amendments thereof to the extent that the same will not unconstitutionally impair the obligations of contracts created under the provisions of the Indenture.

"Liquidity Facility" means Liquidity Facility as defined in the Indenture.

"Liquidity Facility Obligations" means obligations of the Commission under the Liquidity Facility.

"Liquidity Facility Provider" means Liquidity Facility Provider as defined in the Indenture.

"Note Payment Fund" means the fund created by Sections 5.03 and 5.06 of the Indenture.

"Notes" means Notes as defined in the Indenture.

"Project" means the Projects identified in Annex A hereto.

"Project Fund" means the fund created by Sections 5.03 and 5.05 of the Indenture and, upon issuance of the Bonds, means the fund, if any, created by the Bond Resolution for the payment of costs of the Project.

"Proportionate Share" means a factor determined by dividing the principal portion of the State Agency's Debt Servicing Obligation by the principal amount of all Notes (other than any renewal Notes) issued under the Indenture.

"Registrar" means Registrar as defined in the Indenture.

"Related Notes" means Notes issued or to be issued for the purpose of financing the Project.

"Renewal Term" means a period of two (2) years coinciding with the fiscal biennium of the Commonwealth, which commences on July 1 in each even-numbered year and ends on June 30 of the next ensuing even-numbered year unless hereafter modified by statute.

"State Agency" means the State Agency identified on the cover page hereto.

"Trustee" means JP Morgan Trust Company, National Association, successor to Bank One Trust Company, NA, a national banking association organized under and existing by virtue of the laws of the Commonwealth of Kentucky, having proper trust powers, and having its principal office and place of business in the City of Lexington, Kentucky and including any successor trustee designated pursuant to the provisions of the Indenture.

Any terms not defined in this Financing Agreement but defined in the Indenture, if used herein, shall have the same meanings ascribed to them in the Indenture.

## **ARTICLE II**

### **AGREED RECITATION OF ESTIMATED TOTAL COSTS OF THE PROJECT**

Section 2.01. The Commission, the State Agency and the Cabinet agree that the aggregate of all costs of the Project to be funded from the proceeds of the Related Notes and Bonds will not exceed the amounts set forth in the Budget Act, which amounts are more specifically identified in Exhibit A hereto, plus Financing Expenses and Bond issuance costs, provisions for any debt service reserve fund, any capitalized interest, provisions of contingencies and discount in the sale of the Bonds and Related Notes.

## **ARTICLE III**

### **APPLICATION AND REQUEST OF THE STATE AGENCY THAT THE COMMISSION ISSUE NOTES**

Section 3.01. The Cabinet hereby makes application, on behalf and at the direction of the State Agency, to the Commission, and requests that the Commission authorize in the Commission's own name and offer, from time to time, the Commission's Notes in the principal amount not to exceed the costs of the Project established in Section 2.01 hereof for the purpose of providing interim financing for the Project, all as is more specifically provided in the Act and the Indenture.

## **ARTICLE IV**

### **AGREEMENT OF STATE AGENCY TO ISSUE ITS BONDS AND COMMISSION TO ISSUE ITS NOTES AND APPLY THE PROCEEDS THEREOF TO THE ACQUISITION OF THE PROJECT**

Section 4.01. The State Agency hereby agrees that, in accordance with its lawful authority and powers, it will, proceed with all reasonable dispatch to authorize in its own name and issue Bonds to finance the Project, at the time and in the amounts necessary to provide adequate financing for the Project and to retire, at or prior to maturity, Notes, subject to the limitations of the Act and the Budget Act. The State Agency, in its sole discretion shall, based on sound financial practices, establish the interest rates, maturities, sale price and other terms and conditions of Bonds from time to time issued as required by this Financing Agreement and shall issue and deliver Bonds and apply the proceeds thereof to financing the acquisition of the Project or retirement of the Related Notes.

Section 4.02. The Commission hereby agrees that in accordance with its lawful authority and powers and according to the Act and the request and authorization of the State Agency and the Cabinet pursuant to KRS 56.867, it will, responsive to such request, proceed with all reasonable dispatch to authorize in its own name and issue Notes to provide interim financing for the Project, at the time and in the amounts necessary, as determined by the Commission, to provide adequate interim financing for the Project, subject to the limitations of the Act and the Budget Act. The Commission in its sole discretion shall, based on sound financial practices, establish the interest rates, maturities, sale price and other terms and conditions of Notes from time to time issued pursuant to this Financing Agreement and shall issue and deliver Notes and apply the proceeds to financing the acquisition of the Project.

## ARTICLE V

### INITIAL TERMS; OPTIONAL RENEWALS; FINANCING PAYMENTS

Section 5.01. The Commission hereby agrees to provide interim financing for the Project to the State Agency, for an initial term ending June 30, \_\_\_\_\_, with the right and privilege by the State Agency to continue this Financing Agreement and have the Project for succeeding biennium periods in the event this Financing Agreement is renewed as provided herein. The State Agency shall pay or cause to be paid as Financing Payments during such initial period ending on June 30, \_\_\_\_\_, the Debt Servicing Obligation, as hereinafter defined, applicable to the Related Notes, due on each Debt Servicing Date, as hereinafter defined, during the term of the Financing Agreement so long as any Related Notes are outstanding or any amounts are due under a Credit Facility Agreement or Liquidity Facility.

Section 5.02. For purposes hereof:

"Debt Servicing Date" shall mean (i) the date on which the Commission has estimated that capitalized interest in the Note Payment Fund that is attributable to the State Agency will no longer be sufficient to pay interest on the Related Notes (which date is set forth in Annex A hereto) and \_\_\_\_\_ 1 of each year thereafter, (ii) any Interest Payment Date on which the amount in the Note Payment Fund that is attributable to the State Agency (as determined by the Commission) is not adequate to pay the amounts set forth in clauses (i) through (vi) of the definition of Debt Servicing Obligation, and (iii) if no capitalized interest is attributable to the Related Notes on the date of their delivery, the date of delivery of the Related Notes.

"Debt Servicing Obligation" shall mean the entire amount included in its budget (the "Budgeted Amount") for the payment of debt service with respect to the Project, less any amount in the Note Payment Fund on the date of the payment thereof which is attributable to the State Agency (as determined by the Commission). The State Agency shall approve a Budgeted Amount that is no less than the amount reasonably estimated to be required to be paid in respect of the Related Notes during the period to which the Budgeted Amount relates (the "Budget Period"), including (i) the scheduled maturity of principal of any Related Notes for which Bonds or renewal Notes are not being issued and the principal amount of Related Notes for which Bonds are not being issued, if any, called or to be called for redemption during the applicable Budget Period, and the premium, if any, with respect to such Related Notes, (ii) the interest required or estimated (by the Commission) to be paid on the Related Notes which will be outstanding during the applicable Budget Period, (iii) Credit Facility Obligations applicable to the Related Notes (to the extent not paid under clauses (i) and (ii)), (iv) Liquidity Facility Obligations applicable to the Related Notes, (v) its Proportionate Share of any Financing Expenses and (vi) the reasonable and agreed fees of the Credit Facility Provider, the Liquidity Facility Provider, the Remarketing Agent, the Trustee, the Paying Agent and the Registrar, but only to the extent not otherwise paid directly by the State Agency. In addition to the foregoing, if on any Interest Payment Date, the amount in the Note Payment Fund that is attributable to the State Agency (as determined by the Commission) is not adequate to pay the amounts set forth in clauses (i) through (vi) above, the State Agency shall pay, regardless of the Budget Amount, the amount required to satisfy such deficiency from whatever sources are available for such purpose.

The State Agency shall be entitled to a credit against the Debt Servicing Obligation otherwise required to be paid on any Debt Servicing Date to the extent there are funds



attributable to it, as determined by the Commission, in the Interest Account of the Note Payment Fund or in the Operating Account of the Expense Fund, prior to the payment of the Debt Servicing Obligation hereunder which, under the terms of the Indenture and applicable law, can be used to meet the Debt Servicing Obligation. It is understood that, pursuant to the Indenture, all income derived from investment of the Project Fund may, at the discretion of the Cabinet and the State Agency, be transferred to the Note Payment Fund and, if so transferred, shall be a credit against Financing Payments due and payable by the State Agency. Amounts transferred from the Expense Fund, established by the Indenture, to the Note Payment Fund, shall be a further credit against Financing Payments due and payable by the State Agency.

Upon issuance of the Bonds, the final Debt Servicing Obligation for the Related Notes shall be the amount determined by the Commission in accordance with Section 5.04.

Section 5.03. Beginning June 30, 2004, the Commission hereby grants unto the State Agency exclusive option to renew the Financing Agreement for successive ensuing Renewal Terms, commencing July 1 in each even-numbered year, and ending June 30 of the next ensuing even-numbered year, and the last Renewal Term shall end June 30 of the even numbered year next following the final maturity date of the Related Notes, or such other date as may be set forth in a Supplemental Financing Agreement entered into pursuant to the provisions of Section 5.10 hereof or otherwise agreed to by the Commission and the State Agency; and for each such Renewal Term, if renewed therefor, the State Agency shall become obligated to pay, and hereby agrees that in the event of such renewal it will pay or cause to be paid, to the Commission, as Financing Payments for such biennium, each Debt Servicing Obligation which comes due on each Debt Servicing Date during the Renewal Term as a general obligation of the State Agency for such period, secured by amounts budgeted by the State Agency in its agency fund for such purpose.

Section 5.04. Financing Payments becoming due during the first term ending June 30, 2004, and for each Renewal Term, if the Financing Agreement shall be renewed for any such Renewal Term, shall be made or caused to be made by the State Agency to the Commission on each Debt Servicing Date during each such term, in such minimum amounts as will enable the Commission, solely from such source, to pay its Debt Servicing Obligation as of such date. Upon the issuance of the Bonds, the Commission shall also advise the State Agency of the remaining Financing Payments and the State Agency's remaining Proportionate Share of Financing Costs payable to the Trustee for payment of any Related Notes which remain Outstanding.

Section 5.05. Each of the successive options to renew shall in each instance be deemed automatically exercised, and the Financing Agreement automatically renewed for the succeeding Renewal Term, effective on the first day thereof, unless a written notice of the State Agency's election not to renew, signed by an authorized officer of the State Agency, shall have been delivered to the Commission before the close of business on the last business day in May, immediately preceding the beginning of such succeeding Renewal Term.

Section 5.06. The State Agency covenants and agrees to pay "Additional Payments" for the term of the Financing Agreement and for any Renewal Term during which Related Notes are outstanding, to the extent such payments are not a part of the Debt Servicing Obligation, as follows:

- (i) To the Trustee, when due, a Proportionate Share of all fees of the Trustee for services rendered, all fees and charges of any Paying Agent, Registrar, counsel,

accountants, and others incurred in the performance on request of the Trustee of services for which the Trustee and such other persons are entitled to payment or reimbursement which are not paid as Financing Payments;

(ii) To the Credit Facility Provider and Liquidity Facility Provider, when due, a Proportionate Share of all fees, expenses and other charges payable to the Credit Facility Provider under the Credit Facility Agreement and to the Liquidity Facility Provider under the Liquidity Facility which are not paid as Financing Payments;

(iii) To the Remarketing Agent when due, a Proportionate Share of all fees, expenses and other charges payable to the Remarketing Agent under the Remarketing Agreement; and

(iv) To the Commission, upon demand, all reasonable expenses incurred by it in relation to the Project which are not otherwise specifically identified and required to be paid by the Commission under the terms of this Financing Agreement.

Section 5.07. It is the intention of the parties that this Financing Agreement be an absolutely net agreement, and that all of the Financing Payments available for debt service on the Related Notes and this Financing Agreement shall be construed to effectuate such intent. Except as provided in Section 5.05, so long as any of the Related Notes, or any Credit Facility Obligations or Liquidity Facility Obligations are outstanding or remain unpaid, the obligation of the State Agency to pay the amounts provided for in this Article V shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have.

Section 5.08. This Financing Agreement may be supplemented from time to time whenever additional Notes are issued by the Commission at the request of the State Agency under the provisions of Section 6.11 of the Indenture. Amounts payable under the terms of such supplemental agreement shall constitute Financing Payments under this Financing Agreement and such Financing Payments shall become Pledged Receipts under the Indenture.

Section 5.09. In addition to the duties and obligations of the State Agency set forth in this Financing Agreement, the State Agency hereby covenants and agrees to perform such duties and obligations of it as may be set forth in the Indenture.

## **ARTICLE VI**

### **EFFECT OF THE STATE AGENCY'S EXERCISE OF ITS OPTION TO RENEW**

Section 6.01 In the event the successive renewal options are exercised, according to the automatic renewal provisions hereinabove set forth, then upon the first day of the biennial Renewal Term for which such option is exercised, the State Agency shall be firmly bound for the entire amount of the Financing Payments and Additional Payments becoming due and payable for such Renewal Term as a general obligation of the State Agency, limited to amounts appropriated for such purpose, payable from any and all funds of the State Agency, including, but not limited to, appropriations, contributions, gifts, matching funds, devises and bequests from any source, whether Federal or State, and whether public or private, so long as the same are not conditioned upon any use of the Project in a manner inconsistent with law; provided, however,

nothing herein contained shall be construed as binding the State Agency to pay Financing Payments or Additional Payments for more than one biennial Renewal Term at a time.

## **ARTICLE VII**

### **EFFECT OF THE STATE AGENCY'S ELECTION NOT TO RENEW**

Section 7.01. In the event the State Agency shall give written notice to the Commission of the State Agency's election not to renew this Financing Agreement for any ensuing optional biennial Renewal Term, prior to the automatic renewal hereinabove provided for, the State Agency shall not become obligated to pay Financing Payments or Additional Payments beyond the last day of the then current term, and the State Agency shall thereby forfeit all of its future options to renew and shall peacefully surrender to the Commission, possession of the Project on or prior to the last day of the then current term; provided, however, an election on the part of the State Agency not to renew for a future term shall not in any manner alter or diminish any obligation of the State Agency hereunder for the then current term; and shall not preclude subsequent reinstatement of the Financing Agreement for any future renewal term, if agreed to by the Commission upon the same terms and conditions as would have been applicable if the Financing Agreement had been renewed according to the provisions hereof, except that if such reinstatement is sought when one or more installments of Financing Payments or any Additional Payments for such Renewal Term are overdue and unpaid, it shall be a condition of such reinstatement that such overdue Financing Payments or Additional Payments be tendered.

## **ARTICLE VIII**

### **STATE AGENCY TO HAVE PEACEFUL POSSESSION SO LONG AS THE FINANCING AGREEMENT IS IN FULL FORCE AND EFFECT**

Section 8.01. The Commission covenants that during the initial term of this Financing Agreement and during each successive optional Renewal Term for which this Financing Agreement may be renewed, if the State Agency shall continue in good standing according to the provisions hereof, the Commission shall maintain the State Agency in peaceful possession and enjoyment of the Project.

## **ARTICLE IX**

### **STATE AGENCY TO REQUIRE SUFFICIENT AMOUNTS IN ITS BUDGET IN ORDER FOR FINANCING PAYMENTS TO BE MADE**

Section 9.01. The State Agency covenants and agrees that on each and every occasion when appropriations bills are prepared for introduction in the various successive Sessions of the General Assembly of the Commonwealth, the State Agency will cause to be included in its budget and seek an appropriation for, sufficient amounts in the aggregate (over and above all other requirements of the State Agency) to enable the State Agency to pay Financing Payments and Additional Payments and thereby provide to the Commission moneys sufficient for the payment of the principal and interest on the Related Notes as such amounts are due and payable, subject to the Commission's obligation to issue renewal Notes upon the maturity of any Related Notes, and to pay any and all Credit Facility Obligations and Liquidity Facility Obligations applicable to the Related Notes.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Each of the following events is hereby defined as and shall constitute an "event of default":

(a) default in the due and punctual payment of any Financing Payments or Additional Payments; or

(b) default in the performance of any of the covenants, terms, and conditions of this Financing Agreement, and failure to remedy such default within thirty (30) days after written receipt thereof if the default relates to matters other than the payments described in (a) above (but the State Agency shall not be deemed to be in default if the State Agency commences to remedy said defaults other than related to payment of Financing Payments or Additional Payments within said thirty (30) day period, and proceed to and do remedy said default with due diligence).

If an event of default occurs, the Commission, in addition to all other remedies given to the Commission at law or in equity, may by written notice to the State Agency terminate this Financing Agreement or, without terminating this Financing Agreement, take possession (actually or constructively) of the Project. In such event, the Commission may lease the Project or portions thereof, to any party it deems appropriate and in the event of a leasing may apply the rent therefrom first to the payment of the Commission's expenses incurred by reason of the State Agency's default, and the expense of leasing, including but not limited to any repairs, renovation or alteration of the Project, and then to the payment of Financing Payments, Additional Payments and all other sums due from the State Agency hereunder; provided, that prior to any such reletting, the Commission shall deliver to the Trustee an opinion of nationally recognized bond counsel to the effect that such subletting or reletting will not cause the interest on any Series A Notes or the Series B Notes to be includible in gross income of the owners thereof for federal income tax purposes. All remedies available to the Commission are declared to be cumulative and concurrent. No termination of this Financing Agreement nor any taking or recovering of possession of the Project shall deprive the Commission of any of its remedies or actions against the State Agency.

## ARTICLE XI

### PROVISIONS OF FINANCING AGREEMENT ARE FOR BENEFIT OF THE HOLDERS OF THE NOTES AS THIRD PARTY BENEFICIARIES

Section 11.01. All of the provisions herein contained are made for the benefit of each of the Holders and any Credit Facility Provider and any Liquidity Provider. Each and all of the Holders, such Credit Facility Provider, such Liquidity Provider and the Trustee on behalf of the Holders have the rights of third party beneficiaries to enforce all of the provisions of this Financing Agreement herein contained; subject, however, to the provisions of the Indenture with respect to enforcement of rights.

## **ARTICLE XII**

### **TAX COVENANT**

Section 12.01. To the full extent that it has the legal right to do so, the State Agency agrees to all of the provisions of the Indenture authorizing the Notes; and that it will neither take any action nor omit to take any action which taking or omission would result, in the exclusion of the receipt of interest on any of the Related Notes from the treatment afforded by Section 103(a) of the Code, to the extent the interest on such Related Notes is intended to be excludible from gross income for federal income tax purposes, under the terms of the Indenture.

Section 12.02. It is agreed that nothing has been done or will be done by either the Commission or the State Agency which will cause the Related Notes to be private activity bonds within the meaning of Section 141 of the Code, including performance of any of the covenants contained herein, to the extent the interest on such Related Notes is intended to be excludible from gross income for federal income tax purposes, under the terms of the Indenture.

## **ARTICLE XIII**

### **TERMINATION OF FINANCING AGREEMENT**

Section 13.01. Upon the payment in full of the total principal and interest due or to become due on the Related Notes, including premium, if applicable, at the times and in the manner stipulated therein, in the Indenture, or upon defeasance of the Related Notes in accordance with the terms of the Indenture, and the payment of all Credit Facility Obligations and Liquidity Facility Obligations, this Financing Agreement and all covenants, agreements and other obligations herein applicable to the Related Notes and the Commission shall cease, terminate and become void and be discharged and satisfied. In such event, the Commission, upon the request of the State Agency, shall execute and deliver all such instruments as may be desirable to evidence such discharge and satisfaction of the State Agency's obligations applicable to the Related Notes.

## **ARTICLE XIV**

### **SECURITY AND ASSIGNMENT**

Section 14.01. This Financing Agreement secures (i) the payment of Financing Payments and Additional Payments hereunder, (ii) the payment of the Notes in the aggregate principal amount which may from time to time be outstanding under the Indenture, with interest thereon at the rates per annum borne by the Related Notes, (iii) the payment of the Credit Facility Obligations, and (iv) the payment of the Liquidity Facility Obligations.

This Financing Agreement is given subject to all of the terms, conditions and provisions of the Indenture. In the event that any conflict should exist or appear to exist between the provisions of this Financing Agreement and the Indenture, the provisions of the Indenture shall prevail.

## **ARTICLE XV**

### **PROVISIONS OF FINANCING AGREEMENT ARE SEVERABLE**

Section 15.01. If any section, paragraph, clause or provision of this Financing Agreement shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Financing Agreement.

## **ARTICLE XVI**

### **INDEX AND HEADINGS PRECEDING SECTIONS ARE NOT PART OF THE FINANCING AGREEMENT**

Section 16.01. The Index and the headings preceding the text of the several sections hereof shall be solely for convenience of reference and shall not constitute a part of this Financing Agreement, nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Financing Agreement by their officers thereunto duly authorized, as of the date and year first above written.

**KENTUCKY ASSET/LIABILITY  
COMMISSION**

By: \_\_\_\_\_  
Chairman

**ATTEST:**

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

**FINANCE AND ADMINISTRATION  
CABINET OF THE COMMONWEALTH OF  
KENTUCKY**

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

**UNIVERSITY OF KENTUCKY, State Agency**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form and legality:

By: \_\_\_\_\_  
Office of Legal and Legislative  
Services, Legal Counsel to the  
Kentucky Asset/Liability Commission

**APPROVAL AND CONSENT OF FINANCE AND  
ADMINISTRATION CABINET**

The Secretary of the Finance and Administration Cabinet (the "Cabinet") of the Commonwealth of Kentucky hereby acknowledges his approval and consent and the approval and consent of the Cabinet to the terms and provisions of this Financing Agreement and to evidence acceptance of the obligations and covenants of the Cabinet contained in such Financing Agreement and on behalf of the Cabinet confirms that the provisions of this Financing Agreement are consistent with the public interest. This approval and consent is applicable only insofar as the same are within the jurisdiction, functions and powers of the Cabinet or within the jurisdiction, functions and powers of the Secretary of the Cabinet.

DATED: \_\_\_\_\_

**FINANCE AND ADMINISTRATION  
CABINET OF THE COMMONWEALTH OF  
KENTUCKY**

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



**ANNEX A**

**THE PROJECT**

<u>Project</u>	<u>Amount</u>	<u>First Debt Servicing Date</u>
Parking	\$4,363,000	
Infrastructure Projects, including (a) Replace Central Facilities Management Project, (b) Replace Steam and Condensate Pipe, (c) Improve Central Heating Plan and (d) Replace High Voltage Wiring.	\$6,000,000	

## ANNEX B

### FORM OF RESOLUTION

RESOLUTION OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF KENTUCKY ("STATE AGENCY") APPROVING A FINANCING AGREEMENT AMONG THE STATE AGENCY, THE KENTUCKY ASSET/LIABILITY COMMISSION AND THE FINANCE AND ADMINISTRATION CABINET OF THE COMMONWEALTH OF KENTUCKY FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR AN AUTHORIZED PROJECT IN ANTICIPATION OF THE ISSUANCE OF BONDS TO PROVIDE PERMANENT FINANCING FOR SAID PROJECT.

WHEREAS, pursuant to Section 56.860 et seq. of the Kentucky Revised Statutes (the "Act"), the Kentucky Asset/Liability Commission (the "Commission") was created and exists as an independent agency and constituted authority of the Commonwealth of Kentucky (the "Commonwealth") and is authorized to issue Project Notes, as defined in the Act, at the request of the Cabinet, as defined in the Act, to provide interim financing for Authorized Projects, as defined in the Act, in anticipation of the issuance of bonds; and

WHEREAS, the General Assembly pursuant to H.B. 269 of the General Assembly of the Commonwealth of Kentucky, 2003 Regular Session (the "Budget Act") authorized certain expenditures in certain amounts for the hereinafter described Project to be financed with bonds, which Project constitutes an Authorized Project, as defined in the Act; and

WHEREAS, the State Agency, intends to issue bonds (the "Bonds") at the time that is in the best financial interests of the Project, to provide permanent financing for the Project and has requested, through the Finance and Administration Cabinet (the "Cabinet"), in accordance with the Act, that the Commission issue and sell Project Notes to provide funds for the Project in anticipation of the issuance of the Bonds; and

WHEREAS, the Commission has determined to provide interim financing for the Project through the issuance of its Project Notes, 2002 Agency Fund Series (the "Notes");

WHEREAS, the State Agency wishes to authorize the Financing Agreement (the "Financing Agreement") among the State Agency, the Commission and the Cabinet to provide interim financing for the Project and as evidence of its commitment to issue the Bonds, which Bonds constitute the Bonds described in the Financing Agreement.

NOW THEREFORE, it is hereby resolved and ordered by the Board of Trustees of the University of Kentucky as follows:

Section 1. Determinations. The State Agency hereby finds and determines that (a) it hereby ratifies and affirms its request that the Commission issue the Notes in anticipation of the issuance of the Bonds, for the purpose of paying the costs of the Project; (b) it is necessary to execute and deliver the Financing Agreement in order to provide for a source of payment for the Notes; and (c) approval of the Project described in the Financing Agreement is hereby ratified and confirmed.

Section 2. The Financing Agreement and Other Documents. As evidence of its obligations in this Resolution, the Chairman is hereby authorized to execute, acknowledge and

deliver, on behalf of the State Agency, the Financing Agreement, in substantially the form submitted to the State Agency, which is hereby approved, with such changes therein not inconsistent with this Resolution and not substantially adverse to the State Agency as may be permitted by the Act and approved by such officer. The approval of such changes by such officer, and that such changes are not substantially adverse to the State Agency, shall be conclusively evidenced by the execution of the Financing Agreement by such officer. The Chairman and Secretary are hereby separately authorized to take any and all actions and to execute such other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams LLP, as bond counsel for the Notes, in order to effect the issuance of the Notes and the intent of this Resolution.

Section 3. Effective Date. This resolution shall take effect immediately upon its adoption.

ADOPTED AND APPROVED this 22nd day of June, 2004.

**UNIVERSITY OF KENTUCKY**, State Agency

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

Title: \_\_\_\_\_

**CERTIFICATE**

It is certified that the foregoing is a true and correct copy of a resolution duly adopted by the Board of Trustees of University of Kentucky ("State Agency") on the 22nd day of June, 2004, and such resolution has not been altered, amended or repealed.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Secretary

## ANNEX C

### GENERAL CLOSING CERTIFICATE OF STATE AGENCY

Re: Kentucky Asset/Liability Commission Project Notes, 2002 Agency Fund Series, Financing Agreement

The undersigned, Chairman of the Board of Trustees of the University of Kentucky (the "State Agency"), hereby certifies, as of the date hereof, that (the capitalized terms used herein having the meanings given them in the Financing Agreement (the "Financing Agreement") among the State Agency, the Kentucky Asset/Liability Commission (the "Commission") and the Finance and Administration Cabinet of the Commonwealth of Kentucky (the "Cabinet")):

(a) The State Agency is duly organized and existing as an independent agency and constituted authority of the Commonwealth of Kentucky with full legal right, power and authority to enter into the Financing Agreement and consummate the transactions contemplated by the Financing Agreement;

(b) The execution and delivery of the Financing Agreement and compliance with the provisions thereof, under the circumstances contemplated thereby, will not in any material respect conflict with or constitute on the part of the State Agency a breach of or default under any other agreement or instrument to which the State Agency is a party or any existing law, administrative regulation, court order or consent decree to which the State Agency is subject;

(c) The State Agency has in all respects complied with the requirements of the Financing Agreement and the Act and will comply with all other laws and the Constitution of the Commonwealth;

(d) All approvals, consents and orders of any governmental authority, board, commission or agency having jurisdiction which would constitute a condition precedent to the performance by the State Agency of its obligations under the Financing Agreement have been obtained;

(e) The Financing Agreement, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the State Agency enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted;

(f) The State Agency has duly (i) adopted the resolution approving the Financing Agreement (the "Resolution"), and such Resolution is in full force and effect, (ii) authorized and approved the execution and delivery of, and the performance by the State Agency of the obligations contained in the Financing Agreement;

(g) The State Agency is not in breach of or default under any applicable law or administrative regulation of the Commonwealth, any department, division, agency or instrumentality thereof, or the United States, or any applicable judgment or decreed or any loan agreement, note, resolution, certificate, agreement or other instrument to which the State Agency is a party or is otherwise subject;

(h) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending or, to the knowledge of the State Agency threatened against or in any way affecting the existence of the State Agency or the title of any of the officers or members of the State Agency to their office, or seeking to restrain or to enjoin the entering into of the Financing Agreement, or the application of the proceeds of the Financing Agreement as provided therein, or the collection of the revenues received by the State Agency, or in any way contesting or affecting the validity or enforceability of the Financing Agreement, or contesting the existence or powers of the State Agency or its authority with respect to the Financing Agreement or the Resolution nor to the best knowledge of the State Agency is there any basis therefor.

(i) The representations, warranties, covenants and agreements of the State Agency set forth in the Financing Agreement are true and correct in all material respects as of the date hereof.

(j) No event has occurred and is continuing which constitutes an event of default or would constitute an event of default but for the requirement that notice be given or time elapse or both under the Financing Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her signature this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

Title: \_\_\_\_\_

**ANNEX D**

**OPINION OF COUNSEL TO STATE AGENCY**

[Date of Delivery of Financing Agreement]

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Frankfort, Kentucky

Kentucky Asset/Liability Commission  
Frankfort, Kentucky

Peck, Shaffer & Williams LLP  
Covington, Kentucky

Gentlemen:

I am acting general counsel for the University of Kentucky (the "State Agency"), and in such capacity, am familiar with its organization, statutory authority, regulations (if any), agreements and resolutions, all as in effect on the date hereof.

I have examined an executed copy of the Financing Agreement (the "Financing Agreement") among the State Agency, the Kentucky Asset/Liability Commission (the "Commission") and the Finance and Administration Cabinet of the Commonwealth of Kentucky (the "Cabinet relating to the issuance of Kentucky Asset/Liability Commission Project Notes, 2002 Agency Fund Series (the "Notes") under the terms of the Indenture. I have also examined the original photostatic or certified copies of such records of the State Agency and other documents and materials, and have made such inquiries, as I have deemed relevant and necessary.

Based upon the foregoing, I am of the opinion that:

(1) The State Agency is an agency of the Commonwealth, duly organized and validly existing under the laws of the Commonwealth and constitutes a "State Agency" within the meaning of Sections 56.860, *et seq.* of the Kentucky Revised Statutes.

(2) The Financing Agreement has been duly authorized, executed and delivered by the State Agency and creates a valid, binding and enforceable agreement of the State Agency and the Financing Agreement creates a valid, binding and enforceable obligation of the State Agency (i) to pay to the Commission the payments as are provided for in the Financing Agreement, subject only to biennial appropriations by the General Assembly of the Commonwealth and (ii) to issue the Bonds, as defined in the Financing Agreement, subject to the conditions described in the Financing Agreement.

(3) The execution, delivery and performance of the Financing Agreement by the State Agency is not subject to any authorization, consent, approval or review of any governmental body or regulatory authority not heretofore obtained or effected as required.

(4) To the best of my knowledge, after due inquiry, there is no litigation pending or threatened against the State Agency, which would affect the creation, organization or existence of the State Agency or the title of its present members or officers to their respective offices, or contesting or affecting the validity or enforceability of the Financing Agreement.

(5) The execution and delivery of the Financing Agreement and the performance by the State Agency of its obligations thereunder, does not and will not conflict with, violate or constitute a default under any court or administrative order, decree or ruling, or any law, statute, ordinance or regulation, or any agreement, indenture, mortgage, lease, note or other obligation or instrument binding upon the State Agency, or any resolutions heretofore adopted by the State Agency.

This opinion may be relied upon by the Commission and by Bond Counsel in connection with the authorization and the issuance of the Notes by the Commission.

Respectfully submitted,

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