

## MEMORANDUM OF AGREEMENT **DRAFT**

This MEMORANDUM OF AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between Morehead State University, whose address is 150 University Boulevard, Morehead, Kentucky (hereinafter, "MSU"), and Rowan County Fiscal Court, whose address is \_\_\_\_\_, Morehead, Kentucky (hereinafter, "Rowan County") and the City of Morehead, whose address is \_\_\_\_\_, Morehead, Kentucky (hereinafter, "City of Morehead") and Morehead Tourism, whose address is \_\_\_\_\_, Morehead, Kentucky (hereinafter "Tourism"), known collectively as the "Community".

WITNESSETH: The parties for the considerations hereinafter mentioned, covenant and agree as follows:

### 1. Premises

- a. It is agreed that the following areas in the Laughlin Health Building will be used by the Community to serve as a Community Center, consisting of 57,778 square feet, hereinafter called the "Premises". A copy of the floorplan is included as Attachment 1.
- b. It is agreed that the remaining rooms will be retained by MSU, consisting of 13,968 square feet. These rooms include:

<b>Room Number</b>	<b>Square Footage</b>
Rooms 100 & 101	3,394
Rooms 110 & 111	5,184
Room 109	1,198
Room 200D	203
Room 212	1,456
Breezeway between Laughlin and Wetherby Gymnasium	2,533

- c. MSU shall use Room 212 for six (6) months following the date of this Agreement. After that time, the Community shall have use of the room.
- d. Room number 108 shall be made available for use by MSU during MSU Volleyball Team matches. Dates and times will be provided to the Community when the volleyball schedule is finalized.

### 2. Term

- a. The term of this Agreement shall be from \_\_\_\_\_, until \_\_\_\_\_.
- b. This Agreement may be automatically extended for two 24-month periods under the same conditions as set forth herein. No extension shall prolong the period of occupancy of the Premises beyond June 30, 2024, except by negotiating and entering into a new Memorandum of Agreement.

### 3. Termination

Either party shall have the right to terminate this Agreement at any time upon at least thirty (30) days' written notice, time to be computed from the date of mailing notice.

### 4. Base Payment

The Community shall pay to MSU \$25,000 per year, to be paid bimonthly.

5. Invoices

- a. MSU shall invoice the Community every 60 days for the Base Payment, Utilities (as outlined in Paragraph 14), and Parking (as outlined in Paragraph 11). The Community shall pay the invoice within 30 days of the date of mailing.
- b. All invoices shall be sent to the City of Morehead and the City of Morehead shall be responsible for allocating the invoice to Rowan County and Morehead Tourism.

6. Permitted Use

The Community shall operate the Premises as a Community Center and for no other purpose without MSU's prior written consent.

7. Community Center Events

- a. The Community shall be responsible for scheduling the use of the facility by their invitees, visitors, guests, participants, or other user of the Community Center (collectively, the "Patrons").
- b. The Community shall ensure that all events, programs, or other use by Patrons be conducted in a manner to avoid all harm and injury to patrons, the public, employees and any other persons in and around the Premises as well as harm to their property.
- c. MSU shall not provide police, custodial, or event setup services for events held on the Premises. All shall be the sole responsibility of Community.

8. Bowling Alley

- a. The Bowling Alley may be used by the Community by scheduling the same through MSU.
- b. Patrons shall be responsible for payment of the rental fee for the Bowling Alley at the prevailing rate.
- c. The Bowling Alley shall be available for public use at times designated by MSU.

9. Building Manager

The Community shall employ a Building Manager, assigned to the Premises. The function of the Building Manager shall be to coordinate general operational activities of the Community Center.

10. Restricted Dates

- a. The Community agrees that during MSU's Move-In, Commencements, Homecoming, and Family Weekend, the Community shall not host any events.
- b. Dates will be provided to the Community when they are set.

11. Parking

- a. The Community shall have exclusive use of the parking lot (85 spaces) located at 522 East Main Street as a parking area for use by the Community and Patrons. In addition to the Base Payment set forth above, in consideration for use of the parking lot, the Community will pay MSU \$11,000.00 for the period of \_\_\_\_\_, to June 30, 2019; \$12,000.00 for the period of \_\_\_\_\_, to \_\_\_\_\_; \$13,500.00 per year for the period of \_\_\_\_\_, to \_\_\_\_\_; and \$15,000.00 for the period of \_\_\_\_\_, to \_\_\_\_\_, to be billed bimonthly with the Base Payment.
- b. MSU will reserve fifteen (15) spaces near the Premises for the exclusive use of the Community and Patrons.
- c. The Community shall be solely responsible for cleaning the parking areas used by the Community and Patrons. Said areas shall be kept in a clean condition, free from hazards.

- d. The Community shall be solely responsible for snow removal in the 522 East Main Street lot. MSU shall be solely responsible for snow removal in all other parking areas and sidewalks. Said areas shall be kept in a safe condition for use.
  - e. The Community shall repair any damages to the parking areas resulting from the Use of the Premises by the Community or Patrons.
  - f. The Community shall be responsible for knowing its designated parking areas and educating visitors of the same. MSU will strictly enforce campus parking regulations.
12. Traffic Control
- a. The Community shall be responsible for coordinating all parking, towing, and traffic control measures for the use of the Premises and parking areas outlined in paragraph 10(a).
  - b. Any Patrons parking in the wrong lot shall receive tickets.
13. Access & Security
- a. MSU shall re-key the Premises on MSU's Medeco key system and provide the Community with keys. MSU shall provide the first set of keys. Any additional keys shall be at the cost of Community. If keys are lost, stolen, or otherwise disappear, Community shall be financially responsible for rekeying of the Premises and new keys.
  - b. The Community shall be solely responsible for security of the Premises.
  - c. MSU shall have access to the hallways of the Premises for its use in maintaining and accessing MSU areas.
14. Utilities
- a. The Community shall be responsible for payment of all utilities for the Laughlin Health Building (including water, sewer, natural gas and electric) except as specifically set forth below.
  - b. Utility costs will be billed to the Community separately on a bimonthly basis with the Base Payment. Payment of invoices shall be due within 30 days of the billing date.
  - c. MSU will be responsible for providing steam to the building during the heating season.
15. Phone/Internet
- The Community shall be responsible for providing phone and internet to the Premises, including installation and maintenance of all equipment, cabling, etc.
16. Custodial
- a. The Community is responsible for all custodial services at the Premises, including but not limited to labor, supplies, and custodial equipment. The Community shall maintain the Premises in a clean, orderly, and safe manner. Custodial service shall be available on site at all times the Premises is open for use.
  - b. The Community shall further be responsible for all exterminating and pest control for the Premises. Community shall ensure the Premises is kept pest-free.
  - c. MSU will provide custodial service for the portion of the building set out in Paragraph 1(b), including but not limited to labor, supplies, and custodial equipment.
17. Maintenance
- a. Unless otherwise specified, the Community shall be responsible for all costs associated with maintenance of the Laughlin Health Building including all infrastructure and common areas of the building. This includes but is not limited to repairing, maintaining, or replacing the following: lighting (including replacement of bulbs and repairing and maintaining light fixtures), roof, structural, sprinklers and fire safety systems, air/heat

systems, and plumbing of the Laughlin Health Building. Community shall be responsible for inspections of said systems as may be reasonable.

- b. MSU shall perform internal routine maintenance for the area outlined in Paragraph 1(b).
- c. The Community shall maintain all equipment provided by MSU in good condition and will deliver them at the expiration of this Agreement in the same good order and condition as they are in the beginning of this Agreement, except for reasonable wear and tear.

18. Grounds-keeping

MSU shall be responsible for all grounds care, landscaping, and snow removal including sidewalks. Further, MSU shall be responsible for cleaning the exterior of the building. This paragraph does not apply to the 522 East Main parking lot which shall be maintained by the Community.

19. Trash Removal

The Community will provide their own dumpsters and recycling bins and will empty their dumpsters and recycling bins on a regular basis. MSU will work with the Community to designate an appropriate location for the dumpsters and recycling bins.

20. Signage

- a. Subject to MSU's prior written approval, the Community shall be permitted to install, at its expense, signage in the interior of the Premises, provided such signage complies with local, state and governmental laws. Upon the expiration or earlier termination of this Lease, the Community shall remove all signage from the Premises and restore the location of the signage to its original condition, normal wear and tear excepted.
- b. The Community shall be permitted to install an identifying sign outside the Laughlin Health Building. Said sign shall be installed in the ground and shall not be mounted to the exterior of the Laughlin Health Building. The location of the sign shall be mutually agreed upon by all parties and the Community shall be responsible for contacting 811 prior to installation and ensuring the signage complies with local, state, and governmental laws.

21. Modifications

All modifications shall be at the cost of the Community and with prior written consent of MSU. MSU reserves the right to have modifications removed at the termination of this Agreement, at Community's cost.

22. Furniture, Fixtures, & Equipment

The Community will provide equipment and furniture for the Premises. Said additions remain the property of the Community, unless attached as fixtures, and the Community will maintain their own equipment. Any equipment belonging to MSU which is attached to or otherwise a part of the Premises and the building in which it is a part will remain the property of MSU.

23. Insurance

- a. MSU shall maintain property insurance on the Premises (i.e. fire, tornado, etc.).
- b. The Community shall carry general liability insurance on the Premises and shall name MSU as an additional insured under the general liability policy and shall provide documentation naming MSU as an additional insured. The minimum amount of said policy shall be \$3,000,000. Said policy shall also provide coverage for sexual abuse, harassment, molestation, etc. The Community shall immediately notify MSU of any

accident occurring on or near the Premises as well as any other claim (tort or otherwise) as a result of the use of the Premises. Insurance of the community shall be primary.

24. Indemnification

Community agrees to indemnify and hold harmless MSU and its officers, agents, and employees from any claim, damage, liability, injury, expense, or loss including defense costs and attorney's fees, arising out of the Community's performance or use of the Premises under this Agreement or as a consequence of the existence of this Agreement.

25. Vending

MSU shall provide all vending machines at the Premises. MSU Vending shall have access to the Premises for stocking and maintaining machines.

26. Catering

The Community may use catering vendors of its choice. The Community shall ensure that all caterers comply with federal, state, and local law.

27. Alcohol Policy

Alcohol use in or on the grounds of Premises is prohibited. Community shall strictly enforce the total prohibition.

28. Tobacco Free Campus

The Parties agree that the use of tobacco products shall be prohibited within and upon the Laughlin facility building and grounds and all parking areas. The Community shall be responsible for ensuring compliance with this policy during any use of the Premises by the Community or their invitees, visitors, guests, participants, or other user of the Premises.

29. Weapons Policy

- a. The Morehead State University Deadly Weapons on Campus Policy sets forth the University's prohibitions as it relates to weapons on campus. In Kentucky Revised Statute 237.115, the Kentucky General Assembly explicitly recognizes the authority of MSU to control the possession of deadly weapons on any property owned, leased, or controlled by MSU, including the right to prohibit possession of such weapons by any person or entity using MSU property or premises.
  - b. The Community shall be responsible for ensuring strict compliance with MSU's weapons policy during any use of the Premises by the Community or their invitees, visitors, guests, participants, or other user of the Community Center.
- A copy of this policy, PG-62 is included as Attachment 2.

30. Inspection

Community acknowledges that, prior to the signing of this Agreement, it has had the opportunity to inspect the Premises, exterior, and infrastructure, and is accepting the same "as is" including any necessary repairs noted during the inspection.

31. Destruction of Premises

If the Premises are destroyed by fire or other casualty, this Agreement shall immediately terminate. In case of partial destruction or damage, so as to render the Premises untenable, MSU may suspend this Agreement by giving written notice to the Community within fifteen (15) days after such partial destruction or damage with such suspension lasting until such damage is repaired and Premises are considered tenable.

32. Right of Entry

The Community agrees that MSU shall have the right at all reasonable times to enter upon and to inspect the Premises to ascertain that the Community is carrying out the terms and conditions and provisions of this Agreement.

33. Assignment/Sublease

- a. The Community shall not assign this Agreement without the express written consent of MSU.
- b. The Community shall not sublet the Premises and will not permit the use of the Premises by anyone other than the Community, their employees, agents, and invitees.

34. References

- a. All references to MSU shall mean its employees, agents, invitees, or contractors.
- b. All references to the Community, City of Morehead, Rowan County, and Morehead Tourism shall mean their employees, agents, invitees, subtenants, vendors, or contractors.

35. Notices

All notices, demands, or requests shall be made in writing, to the addresses listed at the beginning of this Agreement.

36. Amendment

This Agreement may be amended, in writing, by mutual agreement of both parties.

37. This writing reflects the entire agreement between the parties. No change or modification of this Agreement shall be valid or binding upon the parties hereto, nor shall any waiver of any terms or conditions hereof be deemed a waiver of such terms or conditions in the future, unless such change, modification, or waiver shall be in writing and signed by the parties hereto.

38. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

39. It is understood and agreed by both parties that if any one of the provisions of this Agreement shall contravene or be invalid under the laws of the applicable governmental body, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as if not containing the particular provisions held to be invalid and the rights and obligations for the parties shall be construed and enforced accordingly.

40. This Agreement shall not be construed to create a general partnership, joint venture, or any other organizational combination of the parties, or to authorize either party to act as an agent for or bind the other party in any manner. MSU and the Community shall be and remain independent contractors with respect to the performance of their respective duties and obligations hereunder.

41. The parties agree they will not discriminate in either employment or Premises use and participation or any other aspect of this Agreement because of race, color, creed, sex, religion, age, national origin, disability, military or veteran status or any other protected class.

42. The City of Morehead, Rowan County, and Morehead Tourism certify by their signatures that they are legally entitled to enter into contracts with Morehead State University and that they are not or will not be violating any conflict of interest statute (KRS 45A.330 – 45A.340, 164.390 or any other applicable statute) or principle by the performance of this Agreement, nor will they realize any unlawful benefit or gain directly or indirectly therefrom.

*SIGNATURES TO FOLLOW ON NEXT PAGE*

**MOREHEAD STATE UNIVERSITY**

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**CITY OF MOREHEAD**

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**ROWAN COUNTY FISCAL COURT**

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**MOREHEAD TOURISM**

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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