

**NORTHWEST ARKANSAS COMMUNITY COLLEGE
SPECIAL BOARD OF TRUSTEES MEETING
July 11, 2008 5:00 P.M.
The Doubletree of Bentonville
301 SE Walton Blvd., Bentonville, AR**

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1. Call to Order	
2. Attendance	
3. Approval to Lease Global Business Development Center Land to NWACC Foundation	2
• Ground Lease Agreement	3
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4. Approval to Transfer Funds from Pledged Revenue Account for Burns Hall 3 rd Floor Renovation	54
5. Approval of Policy for the Lease/Use of College Property	55
6. Adjourn	



To: NWACC Board of Trustees

From: Linda Dayton, Interim VP for Finance & Administration

Date: July 11, 2008

Re: Approval to Lease Global Business Development Center Land to NWACC Foundation

The Administration of NWACC requests approval to lease College land to the NWACC Foundation for the purpose of building the Global Business Development Center. This will allow the College to enter into another private-public partnership with the Foundation. The Ground Lease Agreement and the Lease Agreement are included on the following pages.

Recommendation: The administration recommends that the Board of Trustees approve the request to lease College land to the NWACC Foundation to facilitate the construction of the Global Business Development Center.

Coleman Peterson, Chairperson

Robert Teague, Secretary

DRAFT

GROUND LEASE AGREEMENT

between

BOARD OF TRUSTEES OF NORTHWEST ARKANSAS COMMUNITY COLLEGE DISTRICT,
as Lessor

and

NORTHWEST ARKANSAS COMMUNITY COLLEGE FOUNDATION, INC.
as Lessee

DATED AS OF JULY 1, 2008

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GROUND LEASE AGREEMENT

This **GROUND LEASE AGREEMENT** (this "**Ground Lease**"), made and entered into as of the 1st day of July, 2008, is between the **BOARD OF TRUSTEES OF NORTHWEST ARKANSAS COMMUNITY COLLEGE DISTRICT** (the "**Lessor**"), and **NORTHWEST ARKANSAS COMMUNITY COLLEGE FOUNDATION, INC.** (the "**Lessee**"), a non-profit corporation duly organized and validly existing under the laws of the State of Arkansas (the "**State**"),

WITNESSETH:

WHEREAS, the Lessor is the owner of certain property (the "**Property**") located on the campus of NorthWest Arkansas Community College (the "**College**") as more particularly described in Exhibit "A" attached hereto, incorporated in and by this reference made a part hereof; and

WHEREAS, the Lessor and the Lessee desire for the Lessee to develop, construct, and operate, or cause to be operated, the Shewmaker Center for Global Business Development on the Property along with associated site development and various related amenities and improvements (the "**SCGBD**"); and

WHEREAS, the Lessor desires to lease the Property to the Lessee for the purpose of developing, constructing, and operating, or causing to be operated the SCGBD for the use and benefit of the students, faculty and staff of the College; and

NOW, THEREFORE, in consideration of the premises, the rental to be paid hereunder, the mutual covenants and agreements herein set forth by each party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each party hereto, the Lessor and the Lessee do hereby mutually covenant and agree as follows:

The Lessor does hereby let the Property unto the Lessee, subject only to Permitted Encumbrances (as defined herein), and the Lessee does hereby take and hire the Property from the Lessor, subject to all of such liens and encumbrances.

TOGETHER WITH all appurtenances, rights, privileges, and easements benefiting, belonging, or pertaining thereto, and together with the buildings, structures, and improvements erected or to be erected thereon.

TO HAVE AND TO HOLD the Property for a term of years set forth herein unless this Ground Lease shall be sooner terminated as hereinafter provided.

This Ground Lease and all rights of the parties hereunder are expressly subject to the provisions as hereinafter set forth, all of which the parties hereto respectively agree to keep, abide by, and perform during the term hereof.

Section 1. Definitions. The following terms as used in this Ground Lease, shall have the following meanings, unless the context indicates otherwise:

"**Annual Period**" means the twelve (12) month period commencing on July 1 of each calendar year and ending on June 30 of the immediately succeeding calendar year.

"**Architect**" means Wittenburg, Delony & Davidson, Inc., a corporation organized under the laws of the State of Arkansas, with its principal place of business in Little Rock, Arkansas, and its successors and assigns.

“**Architect’s Agreement**” means that certain Agreement dated as of ____, 2008, between the Lessor and the Architect, as architect, pursuant to which the Architect has agreed to provide certain architectural and engineering services in connection with the construction of the SCGBD, and any amendments thereof and/or supplements thereto, a copy of which is attached hereto as part of Exhibit “B.”

“**Assigned Agreements**” means, collectively, the Construction Contract and the Architect’s Agreement.

“**Campus**” means the campus of the College.

“**College**” means NorthWest Arkansas Community College, a public institution organized and existing under the laws of the State of Arkansas.

“**Commencement Date**” means _____.

“**Construction Contract**” that certain Construction Contract dated as of _____, 2008, between the Lessee and the Contractor pursuant to which the Contractor has agreed to construct the SCGBD, and any amendments thereof and/or supplements thereto, a copy of which is attached hereto as part of Exhibit “B.”

“**Construction Documents**” means, collectively, the Construction Contract, the Architect’s Agreement, and all those other contracts and/or agreements between the Lessee and any person or firm rendering services or supplying material in connection with the design, acquisition, construction, furnishing, equipping, and operation of the Project.

“**Contractor**” means _____, an _____ corporation, with its principal place of business in _____, and its successors and assigns.

“**Event of Default**” means each of the events specified in Section 22 hereof.

“**Ground Lease**” means this Ground Lease Agreement, as the same may be amended and/or supplemented from time to time in accordance with the provisions hereof.

“**Leasehold Mortgage**” means, collectively, the Mortgage, and any other encumbrance of the Lessee’s interest in this Ground Lease as security for any indebtedness the Lessee or the Lessee’s successors and assigns may incur, whether by deed to secure debt, mortgage, deed of trust, or other security instrument.

“**Leasehold Mortgagee**” means the holder of the indebtedness secured by any Leasehold Mortgage or any agent or fiduciary therefor and any designee thereof for the purpose of taking title to the Lessee’s interests in the Ground Lease or entering into a Mortgagee Lease.

“**Lessee**” means NorthWest Arkansas Community College Foundation, Inc., a non-profit corporation organized and existing under the laws of the State of Arkansas, and its successors and assigns.

“**Lessor**” means the Board of Trustees of NorthWest Arkansas Community College District, a public institution organized and existing under the laws of the State of Arkansas, and its successor and assigns.

“Lessor Representative” means the Person or Persons designated by the Lessor to serve as the Lessor’s representatives in connection with the design, acquisition, construction, furnishing, equipping, and operation of the Project.

“Loan Agreement” means the Loan Agreement of even date herewith between _____ and the Lessee, as the same may be amended and/or supplemented from time to time.

“Loan Payments” means, collectively, all installments of principal and interest paid or payable for or during such period on or in connection with the financing or refinancing of the design, acquisition, construction, furnishing, and equipping of the SCGBD.

“Mortgage Lease” means a lease of the Premises entered into between a Leasehold Mortgagee, as Lessee, and the Lessor, as Lessor, as a result of a termination of this Ground Lease by reason of any Event of Default for the remainder of the term effective as of the date of termination of this Ground Lease, at the same Rent and upon the same terms, provisions, covenants, and agreements as contained in this Ground Lease and subject to no additional exceptions or encumbrances other than Permitted Encumbrances and to the rights, if any, of the parties then in possession (actual or constructive) of any part of the Premises.

“Operating Account” means the checking account maintained by the Lessee from which the Lessee shall pay Expenses.

“Permitted Encumbrances” means, as of any particular time, (a) liens for ad valorem taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with the Loan Agreement, or this Ground Lease, (b) currently existing utility, access, and other easements and rights of way, restrictions, and exceptions described in the title policy required by the Loan Agreement, (c) inchoate mechanics’ and materialmen’s liens that arise by operation of law, but that have not been perfected by the required filing of record, for work done or materials delivered after the date of recording of this Ground Lease in connection with additions to or alterations of the Project, and (d) the mechanics’ and materialmen’s liens permitted by the Loan Agreement.

“Person” means natural persons, firms, joint ventures, associations, trusts, partnerships, corporations, limited liability companies, public bodies, and similar entities.

“Personalty” means all machinery, equipment, fixtures, appliances, furniture, and any other personal property of any kind or description owned by the Lessee and used in connection with the SCGBD.

“Plans and Specifications” means the detailed plans and specifications for all of the construction of the Project fully identifying and describing all site work, architectural, mechanical, electrical, structural and plumbing systems, materials, materials, signage, design, colors of exterior paints, and other finishes prepared by the Architect or by architects and engineers acceptable to the Architect and Lessor and as approved by Arkansas Building Authority as required, and amended from time to time by the Lessee with the consent of the Lessor, a copy of which is or will be on file with the Lessor.

“Premises” means the SCGBD and the Property.

“Project” means the SCGBD and all Personalty.

“**Property**” means the land located on the Campus as more particularly described in Exhibit “A” attached hereto, incorporated in and by reference made a part hereof .

“**Rent**” means the annual rental payable by the Lessee to the Lessor in accordance with Section 3 hereof.

“**SCGBD**” means the approximately 42,000 square foot building on the Property along with associated site development and various related amenities and improvements.

“**State**” means the State of Arkansas.

“**Sub-Lease Agreement**” means the lease agreement entered into between the Lessee and the Lessor with respect to the Lessor’s lease of the Project and Premises from the Lessee.

“**Termination Date**” means the date on which the term hereof ends by termination or expiration of this Ground Lease.

Section 2. Term. (a) The term of the leasehold estate of the Lessee in the Property created hereunder shall commence on the Commencement Date and shall expire at 12:00 midnight on the earlier of (i) ____, 2107, or (ii) the date on which the all Leasehold Mortgages shall be released and all loan agreements related to such Leasehold Mortgages shall no longer be in effect, unless otherwise extended or sooner terminated in accordance with the provisions hereof or by operation of law.

(b) The Lessor and the Lessee, within thirty (30) days after request of the other, shall confirm the then current Termination Date in writing, and if so requested, by an instrument in recordable form.

Section 3. Rent. In consideration of \$10 per year rent, represented by \$990.00 cash in advance paid for the initial term of this Ground Lease, in providing a desirable financing mechanism for the development of the Project, and for other valuable consideration, the Lessee hereby delivers in full rent for the term of the leasehold estate.

Section 4. Financing of SCGBD. The Lessee shall, at its own cost and expense, obtain all of the financing required for the design, acquisition, construction, and equipping of the SCGBD. The cost and expense of such financing shall be borne by the Lessee. The Lessee agrees to provide the Lessor with copies of all material information and documentation relating to any form of proposed financing. The Lessee agrees that all financing relating to the design, acquisition, construction, and equipping of the SCGBD, or any amendment, renewal, refinancing, or refunding of same during the term of this Ground Lease shall be subject to the prior approval of the Lessor, which approval shall not be unreasonably withheld. In no event shall any financing approved by the Lessor hereunder be modified so as to increase the principal amount outstanding or the term or amortization period of the financing.

Section 5. Taxes and Assessments. (a) It is hereby determined and declared by the Lessor and the Lessee that nothing contained in this Ground Lease is intended to change the degree to which the interest or estate of the Lessee created by this Ground Lease is subject to *ad valorem* property taxes; however, to the extent assessed, the Lessee shall bear and pay to the public officer charged with the collection thereof, before the same shall become delinquent, and shall indemnify, save, and hold harmless the Lessor from the payment of, any and all taxes, assessments, license fees, excises, imposts, fees, and charges of every sort, nature and kind (hereinafter referred to singularly and collectively as “**Tax**”), which during the term hereof are or might be levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of the Lessee or the Lessor therein. If the transfer of fee simple title to the Premises alone results in the levy, assessment, charge, or imposition of *ad valorem* taxes against the

Premises or causes the Property to become subject to such levy or assessment, the successor Lessor shall be responsible for the payment of such taxes, and the Lessee shall have no liability therefor.

(b) If the imposition of any Tax shall be deemed by the Lessee or the Lessor to be improper, illegal, or excessive, the Lessee may, in its own name, dispute and contest the same and, in such event and to the extent permitted by law, any such Tax need not be paid until adjudged to be valid; provided, however, the Lessee shall in writing first notify the Lessor of such dispute and contest and shall comply with the requirements of any Leasehold Mortgage permitted hereunder and related documents concerning the contest of taxes. Unless so contested, any Tax shall be paid by the Lessee within the time provided by law, and if contested, any such Tax shall be paid before the imposition of a lien on the Premises with respect thereto.

Section 6. Payments for the Lessee by the Lessor. If the Lessee fails to procure the insurance required to be procured by the Lessee under this Ground Lease or fails to pay any premium of insurance, Tax, or any other sum in this Ground Lease required to be paid by the Lessee (other than Rent), the Lessor may, after expiration of the applicable cure period and after notifying the Lessee, at the Lessor's option, elect to follow one of the options provided in Section 22(b) hereof or may, without declaring an Event of Default, procure on behalf of the Lessee any such insurance, and pay on behalf of the Lessee any such payment or payments as may be necessary. Any sum(s) so paid or expended by the Lessor on behalf of the Lessee shall immediately be reimbursed and paid by the Lessee to the Lessor as additional rent within twenty (20) days after demand by the Lessor.

Section 7. Compliance with the Lessee with Laws and Ordinances. At all times during the term of this Ground Lease, the Lessee shall conform to, obey, and comply in all material respects with all present and future laws, ordinances, and regulations of all legally constituted authorities existing at the commencement of the term of this Ground Lease or at any time during the continuance of the term hereof which in any way are applicable to this Ground Lease or the use of the Premises or any repair, replacement, demolition, renovation, construction, restoration, or excavation being done on or to the Premises. The Lessee, in its own name and at its sole cost and expense, shall have the right to contest the validity of any law, ordinance, rule, regulation, or requirement contemplated under this Section 7. The Lessee shall use its best efforts not to use, or to suffer or to permit the Premises, or any part thereof to be used in any manner that would constitute a legal nuisance or an unreasonable annoyance to any student, employee, or visitor to the Campus or for any hazardous purpose. In the event, at any time during the term of this Ground Lease, or thereafter, as the result of the Lessee's acts or omissions to act during the term of this Ground Lease, any addition, alteration, change, or repair or other work of any nature, structural or otherwise, be lawfully required or ordered by an applicable governmental body or become necessary on account of any law, ordinance, or regulation of any governmental authority then in effect, or on account of any other reason with respect to the Premises, the entire expense thereof, regardless of when the same shall be incurred or become due, shall be paid by the Lessee and, in no event, shall the Lessor be called upon to contribute thereto or do or pay for any work of any nature whatsoever on or relating to the Premises.

Section 8. Quiet Enjoyment. The Lessor represents and warrants that it owns fee simple, marketable title to the Property subject to no restrictions, liens, or other encumbrances other than Permitted Encumbrances. The Lessor further covenants and agrees that, throughout the term of this Ground Lease, the Lessee may peaceably and quietly enjoy the Property subject, however, to zoning and land use restrictions, Permitted Encumbrances, and the Lessee's fulfillment of the covenants and agreements contained in this Ground Lease.

Section 9. Construction of Improvements. (a) The Lessee shall be permitted to make capital improvements on the property, including but not limited to the construction of, alteration of, repair of,

renovation of or demolition of any future improvement upon the Premises with Lessor's written approval. Completed design documents, which may include any plan, specification regarding any work referenced in the preceding sentence must be submitted to Lessor for review and approval prior to commencement of construction, and said plans and specifications are subject to the review and approval of the Arkansas Building Authority Design Review Section.

(b) The Lessee shall enter into the Construction Contract and the Architect's Agreement. The Lessor hereby approves the Construction Documents and acknowledges receipt of copies of the final forms thereof for the Lessor's approval.

(c) Lessee's Security for Performance. As security for the Lessee's performance hereunder as it relates to the design and construction of the SCGBD, the Lessee grants to the Lessor a security interest in the Construction Documents as provided in Section 11(a) hereof.

(d) Default in Construction. In the event of a default by the Contractor or the Architect in connection with the design and/or construction of the SCGBD, the Lessee shall exercise all of the rights and remedies available to the Lessee in each such agreement in consultation with the Lessor. If an Event of Default shall occur and be continuing, the Lessor may, assert the rights of the Lessee under the terms of the Construction Documents.

(e) Commencement of Construction. The Lessee shall commence and pursue to substantial completion the construction of the SCGBD on the Property, in accordance with the terms of the Construction Contract.

(f) Construction Approvals by the Lessor. Prior to commencing any excavation, construction, paving, or any other work associated with the Property or the Project, the Lessee shall deliver to the Lessor for its approval three (3) sets of the Plans and Specifications. The right of approval of the Lessor with respect to the Plans and Specifications shall include, but not be limited to, the compatibility of the exterior appearance of any improvement with the public activities of the Lessor on adjacent portions of the Campus, except for the approval of the Construction Permit Documents and Plans which shall be required within five (5) days of closing. The Lessor shall have a period of fifteen (15) business days after receipt to approve or reject such submissions, with any rejection being accompanied with a description of measures to be taken by the Lessee that will result in approval on resubmission (or why resubmission of any similar proposal would be rejected). Failure to approve or reject any submissions within such fifteen (15) day period shall be deemed approved by the Lessor. The Lessor agrees not to withhold unreasonably the approval required by this subsection (f). Approval of submissions by the Lessor shall not relieve the Lessee from the obligation to obtain all other necessary approvals and permits required by various governmental agencies to include Arkansas Building Authority or from complying in all material respects with the Plans and Specifications, the Construction Documents, and all applicable building codes and ordinances.

(g) Change Orders. Once the Plans and Specifications are submitted to and approved by the Lessor or the Plans and Specifications are deemed approved in accordance with subsection (f) of this Section, the Lessee may, with the consent or approval of the Lessor, order, authorize, or perform any change or substitute work or materials in prosecuting the construction of the improvements (a "**Change Order**"). The Lessor agrees not to withhold unreasonably the approval required by this subsection (g). The Lessor shall have a period of five (5) business days after receipt to approve or reject any such Change Order. Any such Change Order that is not approved or rejected within such five (5) day period shall be deemed to be approved by the Lessor.

Approval of Change Orders by the Lessor shall not relieve the Lessee from the obligation to obtain all other necessary approvals and permits required by various governmental agencies to include, Arkansas Building Authority or from complying in all material respects with the Plans and Specifications, the Construction Documents, and all applicable building codes and ordinances.

(h) Construction According to Approved Plans. To the extent reasonably possible, development and construction of the Project shall be done so as to minimize disruption of the College's operations. All construction activities must be coordinated with the appropriate departments of the College. All building materials for the SCGBD must be new and of good quality in accordance with the Construction Documents and the Plans and Specifications. The Lessor reserves the right to monitor the Lessee's construction of the Project from its inception to its completion, including participation in all construction meetings contemplated by the Construction Documents. At a minimum, the following restrictions must be placed upon construction activities, and the Lessee will provide for the incorporation of these restrictions in the Construction Documents:

(i) access to the construction site will be limited to those involved with the work;

(ii) for construction activities requiring access to the College's drives and parking areas, access will be restricted to those times approved by the College, which approval will not be unreasonably withheld; however, the Lessor reserves the right to bar any person from Campus for good reason including employees or contractors employees of Lessee, and notify Lessee of such reason;

(iii) construction activities must not unreasonably interfere with entry or exit to campus, campus parking or drives, or pedestrian circulation paths or walks without prior written consent from the College;

(iv) the Lessee must notify the Lessor in writing at least seventy-two (72) hours in advance when coordination meetings requiring the Lessor's participation are required;

(v) the Lessee will provide a six foot (6') high chain link security fence (which may not contain razor or barbed wire) with lockable gates at the perimeter of the construction site and staging area;

(vi) the Lessee, throughout the construction period, shall be responsible for the enforcement of discipline and good order among the workers on the site;

(vii) Campus toilet facilities, parking areas, and student dining facilities may not be used by construction personnel;

(viii) signage, which shall be subject to the Lessor's prior approval, shall be provided and maintained at all entrances to the Campus to direct deliveries, construction personnel, etc. to the construction site; and

(ix) the Lessee and the Lessee's contractors shall not bury or burn or otherwise dispose of construction debris on the Property or on any other portion of the Campus.

(i) Non-Exclusive Easements.

(i) the Lessor agrees and does hereby grant to the Lessee and its successors, assigns, successors-in-title, invitees, employees, and sublessees, a non-exclusive easement on, over,

across, and through the portion of the Campus, as depicted on Exhibit "D" attached hereto and made a part hereof by this reference, for all forms of pedestrian and vehicular ingress, egress, and access between the Property and the public streets and roadways abutting the Campus in accordance with a traffic control plan approved by the Lessor. Such non-exclusive easement herein granted shall expire automatically on the Termination Date.

(ii) the Lessor agrees and does hereby grant to the Lessee and its employees and contractors a non-exclusive, temporary easement on, over, across, and through the portion of the Campus, as depicted on Exhibit "E", for vehicular ingress and egress for construction activities in connection with the Project. Such construction easements shall expire automatically upon the earlier to occur of (A) the Termination Date or (B) the full completion of the Project.

(j) *Payment of Bills for Construction.* As a construction expense, the Lessee covenants and agrees to pay or cause to be paid, currently as they become due and payable in accordance with the terms of the Construction Documents, all bills for labor, materials, insurance, and bonds, and all fees of architects, engineers, contractors, and subcontractors and all other costs and expenses incident to any construction in or on the Project; provided, however, that the Lessee may, in good faith, in its own name, dispute and contest any such bill, fee, cost, or expense, and in such event, any such item need not be paid until adjudged to be valid. Unless so contested by the Lessee, all such items shall be paid by the Lessee within the time provided by law, and if contested, any such item shall be paid before the issuance of an execution on a final judgment with respect thereto. The Lessee agrees to provide the Lessor with copies of each Application for Payment submitted by the Contractor, each Certificate of Payment issued by the Architect prior to payment thereof and evidence of payment of each such Application for Payment.

(k) *All Liens and Rights are Subordinate to the Lessor.* Except for the rights of any permitted Leasehold Mortgagee, including, without limitation, their respective rights referenced in Sections 9(c), 11(a), and 24 hereof, the Lessee's rights, as well as the rights of anyone else, including, but not limited to, any mortgagee, architect, independent contractor, assignee, sublessee, sub-contractor, prime or general contractor, mechanic, laborer, materialman, or other lien or claim holder, shall always be and remain subordinate, inferior, and junior to the Lessor's title, interest, and estate in the Property. The Lessee shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance, or charge levied on account of any mechanic's, laborer's, or materialman's lien, or any security agreement, conditional bill of sale, title retention agreement, chattel mortgage, or otherwise (a "*Lien*") that might or does constitute a lien, encumbrance, or charge upon the Premises, or any part thereof, or the income therefrom, having a priority or preference over or ranking on a parity with the estate, rights, or interest of the Lessor in the Premises or any part thereof, or the income therefrom. Nothing in this Ground Lease shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied, by inference or otherwise, to the filing of any Lien against the Premises by any contractor, subcontractor, laborer, materialman, architect, engineer, or other Person for the performance of any labor or the furnishing of any materials or services for or in connection with the Premises or any part thereof.

(l) *Completion of Construction by the Lessor.* The Lessee covenants and agrees that in the event (i) the Lessee shall abandon or fail to complete the construction of improvements undertaken by the Lessee in accordance with all material requirements of this Ground Lease, and (ii) such failure shall not be solely the result of the occurrence of an Event of Default, the Lessor may, at its option (but without any obligation so to do and without prejudice to any other rights the Lessor may have under this Ground Lease) complete the construction of the improvements undertaken by the Lessee as an expense of the Project and, as nearly as practicable and proper, according to the Plans and Specifications previously approved by the Lessor.

(m) *Title to the Improvements.* The title to all improvements now or hereafter located on the Property including those to be constructed in accordance with the Plans and Specifications and the Construction Documents shall be vested in the Lessee until the Termination Date, at which time all title to and ownership of said improvements shall automatically and immediately vest (without the necessity of any further action being taken by the Lessee or the Lessor or any instrument being executed and delivered by the Lessee to the Lessor) in the Lessor.

(n) *Architects, Engineers, Contractors, Specialists, and Consultants.* The Lessee shall require any architects, engineers, contractors, subcontractors, specialists, and consultants engaged in connection with the construction of the Project to perform their respective obligations under the terms of the Construction Documents to be licensed in accordance with Arkansas law and to obtain and maintain for a period of three (3) years after the substantial completion of the Project errors and omissions insurance pursuant to Section 16(e) hereof and payment and performance bonds pursuant to subsection (q) of this Section 9.

(o) *Permits, Laws, and Ordinances.* The Lessee shall as a construction expense, comply and cause its contractors and subcontractors to comply in all material respects with all building codes, ordinances, rules, regulations, orders, directives, and statutes of all governmental authorities which may now or hereafter, from time to time, be established and which are or shall be applicable to the Lessee as they relate to the Project, including without limitation, the Americans With Disabilities Act of 1990, and shall take, as otherwise provided herein, all action necessary to cause the Project to comply in all material respects with all provisions of the Construction Documents, the Loan Agreement, and this Ground Lease applicable to the Lessee.

(p) *Construction Site.* The Lessee shall confine its operations to the Property and shall not store any material or equipment on property of the Lessor outside the boundaries of the Property, except as approved in writing and subject to such conditions as may be specified and approved by the Lessor. The Lessee shall protect all work and shall at all times keep and cause its contractors to keep the construction site reasonably clean and free from waste materials and rubbish.

(q) *Payment and Performance Bonds.* The Lessee shall cause to be provided to the Lessor payment and performance bonds in a form and from a surety approved by the Lessor, in accordance with the Construction Documents, to include requiring the contractor and appropriate subcontractors to provide payment and performance bonds. The bonds shall be dual obligee surety bonds payable in favor of the Leasehold Mortgagee, as primary obligee, and in favor of the Lessee and the Lessor as additional obligees.

(r) *Substantial Completion of Improvements.* As soon as practicable (however, in no event to exceed six (6) calendar months) after the substantial completion of the Project, the Lessee shall furnish or cause to be furnished to the Lessor:

(i) one complete set of final “as-built” plans and specifications of the completed improvements in auto-CAD format;

(ii) a current, accurate, properly labeled, and certified (by the hereafter stated surveyor or engineer), “as-built” plat of survey prepared by a Arkansas registered land surveyor or professional engineer depicting to scale the location of the completed improvements, as the same have been constructed; and

(iii) one complete set of operations and maintenance manuals for all systems, equipment, furniture, and fixtures relating to the Project.

The term “*substantial completion*” as used in this Ground Lease shall be deemed to mean satisfaction of both of the following conditions: the issuance of a certificate of occupancy by the appropriate authority, if applicable, and such completion as will make the improvements sufficient, suitable, and ready for immediate occupancy and for the use intended.

(s) Lessee shall ensure that any and all facilities, buildings or structures on the Premises conforms to the Arkansas Fire Prevention Code, as amended, Arkansas State Plumbing Code, The National Electrical Code, and any other state and local laws, codes, authorities, etc., applicable to the leased facility including the Arkansas adopted Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (“**ADAAG**”).

Section 10. Operation of SCGBD. (a) *Lessee’s Obligation to Operate.* Upon completion of construction of the SCGBD, the Lessee shall operate, or cause to be operated, the Premises as an educational facility to serve students, faculty, and staff of the College.

(b) *Management of Improvements.* The Lessee shall not enter into any other management agreement with respect to the SCGBD without the Lessor’s consent, which consent shall not be unreasonably withheld.

Section 11. Security Interest. (a) *Pledge, Assignment, and Grant of Security.* As security for the Lessee’s performance of its obligations hereunder, the Lessee hereby assigns and pledges to the Lessor, and hereby grants to the Lessor a security interest in, all of the Lessee’s right, title, and interest in and to the Assigned Agreements, including, without limitation: (i) all rights of the Lessee to receive moneys due and to become due under or pursuant to the Assigned Agreements; (ii) all rights of the Lessee to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to the Assigned Agreements; (iii) claims of the Lessee for damages arising out of or for breach of or default under the Assigned Agreements; and (iv) the right of the Lessee to terminate the Assigned Agreements, to perform thereunder, and to compel performance and otherwise exercise all remedies thereunder. The Lessor acknowledges that, pursuant to the Leasehold Mortgage, the Lessee will grant to the Leasehold Mortgagee security interests in various items of collateral including, but not limited to, the Assigned Agreements and certain rights and remedies with respect thereto and the Project (including all rents, income and proceeds, from insurance or otherwise, from the Project) (collectively, the “**Mortgagee Security Interests**”). Notwithstanding any provision of this Ground Lease to the contrary, any and all security interests granted to the Lessor by the Lessee pursuant to this Ground Lease (including, but not limited to, the security interest granted in this Section 11) shall be subordinate in all respects to the Mortgagee Security Interests (as defined herein) and the interest of any permitted Leasehold Mortgagee both during the term of this Ground Lease and thereafter.

(b) *Further Action and Documents.* The Lessee agrees that from time to time, at the expense of the Lessee, the Lessee will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Lessor may reasonably request, in order to perfect and protect any pledge, assignment, or security interest granted or purported to be granted hereby or to enable the Lessor to exercise and enforce its rights and remedies hereunder with respect to any Assigned Agreements.

(c) *Financing Statements.* The Lessee hereby authorizes the Lessor to file one or more financing and/or continuation statements, and amendments thereto, relating to all or any part of the Assigned Agreements without the signature of the Lessee where permitted by law. A photocopy or other reproduction of this Ground Lease or any financing statement covering the Assigned Agreements or any part thereof shall be sufficient as a financing statement where permitted by law.

(d) *Lessor Appointed Attorney-in-Fact.* The Lessee hereby irrevocably appoints the Lessor the Lessee's attorney-in-fact, with full authority in the place and stead of the Lessee and in the name of the Lessee or otherwise, if an Event of Default shall have occurred, to take any action and to execute any instrument which the Lessor may deem necessary or advisable to accomplish the purposes of this Ground Lease, subject in all cases to the rights of the Leasehold Mortgagee, including, without limitation:

(i) to obtain insurance required to be paid to the Lessor pursuant to Section 16 hereof in the event the Lessee shall fail to obtain such insurance;

(ii) to ask, demand, collect, sue for, recover, compromise, receive, and give acquittance and receipts for moneys due and to become due under or in connection with the Assigned Agreements; and

(iii) to file any claims or take any action or institute any proceedings which the Lessor may deem necessary or desirable to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Lessor with respect to any of the Assigned Agreements.

(e) *Lessor May Perform.* If the Lessee shall fail to perform any agreement contained herein, the Lessor may itself perform, or cause performance of, such agreement, and the reasonable expenses of the Lessor incurred in connection therewith shall be payable by the Lessee to the Lessor as additional rent hereunder.

(f) *Lessor's Duties.* The powers conferred on the Lessor hereunder are solely to protect its interest in the Assigned Agreements and shall not impose any duty upon it to exercise any such powers. The Lessor shall have no duty to take any necessary steps to preserve rights against prior parties or any other rights pertaining to any Assigned Agreements.

Section 12. Assignment of Lease. (a) *Written Consent.* Except as otherwise provided in this Ground Lease (including without limitation, Section 24 hereof), the Lessee, and its successors and assigns, shall not have the right to assign or transfer this Ground Lease or any interest herein or any right or privilege appurtenant hereto or to sublease the Premises or any portion thereof, unless the written consent of the Lessor is first had and obtained, such consent not to be unreasonably withheld.

(b) *Assignment to Leasehold Mortgagee.* Any other provisions of this Ground Lease to the contrary notwithstanding, the Lessee, and its successors and assigns, shall have the right without the consent or approval of the Lessor to assign or transfer this Ground Lease or any interest herein or any right or privilege appurtenant hereto which the Lessee desires to assign or transfer to a Leasehold Mortgagee to the extent permitted in Section 24 hereof. The Lessor agrees to recognize any assignee or transferee of an assignment or transfer for which the Lessor's consent is not required as lessee for the performance of all duties and obligations arising by reason of the interest of this Ground Lease being so assigned or transferred; provided, however, it is hereby agreed and acknowledged by the Lessor and the Lessee that the Lessee, its successors and assigns, shall not be relieved of its liability for the performance of such duties or obligations by any such assignment or transfer.

(c) *Additional Requirements.*

(i) The Lessee shall prior to assigning this Ground Lease to any person or entity, for which the total consideration is greater than \$25,000, require the assignee to complete a Contract and Grant Disclosure and Certification Form. The Lessee shall ensure that any contract agreement, current or future between the Lessee and an assignee for which the total consideration is greater than \$25,000 shall contain the following:

Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be a material breach of the term of this Sublease. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the Lessor.

(ii) The Lessee shall transmit to the Lessor a copy of the Contract and Grant Disclosure and Certification Form completed and signed by the assignee and a statement containing the dollar amount of the Sublease. The Lessee shall transmit to the Arkansas Building Authority, a copy of the disclosure form within ten (10) days of entering into an agreement with an assignee.

(iii) The terms and conditions regarding (1) the failure to disclose, (2) conditions which constitute a material breach of contract, and (3) the rights of termination and remedies under the Governor's Executive Order 98-04 are hereby incorporated.

Section 13. Maintenance of Property. The Lessee shall, at all times during the term of this Ground Lease, at the Lessee's cost and expense, keep and maintain or cause to be kept and maintained the Premises and all adjoining areas out to the perimeter pavement, and appurtenances and every part thereof, and any and all buildings, other structures or improvements that may exist on, in, or be made a part of the Premises, in good order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen. In the event the Lessee fails to perform any of its obligations as required hereunder, after notice and right to cure pursuant to the terms and provisions of Section 22(a) hereof, the Lessor may (but shall not be required to) perform and satisfy same, and the Lessee hereby agrees to reimburse the Lessor, as additional rent, for the reasonable cost thereof promptly upon demand. The parties agree that it shall be the Lessee's sole responsibility at all times during the term of the Ground Lease to maintain or cause to be maintained the Premises consistent with the maintenance standards for the other premises located on the Campus. All normal maintenance and repair during the term of this Ground Lease shall be complete when the Premises are surrendered to the Lessor.

Section 14. Indemnification Agreement. Only to the extent of the Lessee's rights to and ownership interest in the Project or required insurance coverage which shall be the sole source of compensation available to any Indemnitee, the Lessee hereby releases and agrees to indemnify and hold harmless the Lessor and all of its trustees, officers, employees, directors, agents, and consultants (hereinafter collectively referred to as the "***Indemnitees***") of and from any and all claims, demands, liabilities, losses, costs, or expenses for any loss including but not limited to bodily injury (including death), personal injury, property damage, expenses, and reasonable attorneys' fees, caused by, growing out of, or otherwise happening in connection with this Ground Lease, due to any negligent act or omission on the part of the Lessee, its agents, employees, or others working at the direction of the Lessee or on its behalf, or due to the application or violation of any pertinent federal, State, or local law, rule, or regulation; however, the Lessee shall not indemnify any Indemnitee for any liability (or related costs or expenses) caused in part by any criminal, tortuous, or intentional acts of the Indemnitees. This indemnification extends to the successors and assigns of the Lessee, and this indemnification survives the expiration or termination of the Ground Lease and the dissolution or, to the extent allowed by law, the bankruptcy of the Lessee. This indemnification does not extend beyond the scope of this Ground Lease and the Construction Documents and the work undertaken thereunder, and does not extend to claims exclusively between the undersigned parties arising from the terms or regarding the interpretation of this Ground Lease.

Section 15. Police Services. The Premises shall be subject, at all times during the term of this Ground Lease, to the jurisdiction of the College's Campus security force.

Section 16. Insurance. (a) *General.* It is the intent of the parties that all risk of loss for the Project be shifted to insurance to the maximum extent practicable. Accordingly, unless the Lessor otherwise agrees in its sole discretion, the Lessee shall maintain, or cause to be maintained, insurance covering the risks enumerated below to the extent that such insurance is available on commercially reasonable terms. Such insurance shall be written on an occurrence basis unless the Lessor otherwise consents in writing, which consent shall not be unreasonably withheld or delayed, but for errors and omissions insurance issued on a claims made basis, the Lessor may condition such consent on the purchase of a five (5) year tail policy with such limits as the Lessor may reasonably determine appropriate. The policy shall provide that such insurance shall be primary coverage without reduction or right of offset or contribution on account of any insurance provided by the Lessor to itself or its officers, officials, or employees, that such insurance shall not be altered or cancelled without ninety (90) days' written notice to the Lessor, and that such insurance shall name the Lessor, and the Leasehold Mortgagee as an additional insureds. The insurance policies purchased by the Lessee must be issued by a company authorized to conduct business in the State of Arkansas or by a company acceptable to the Lessor and which has a rating of "A-VIII" or better by the latest *Best Insurance Report*. Notwithstanding anything else herein contained, the rights of the Lessor to any insurance policies covering the Premises or the Project (or any portion thereof) and any and all proceeds paid or payable thereunder shall be in all respects junior and subordinate to the rights of the Lessee and any other permitted Leasehold Mortgage.

(b) *Workers' Compensation, Employer's Liability.* All times prior to the Termination Date during any construction conducted by or on behalf of the Lessee on or about the Property or any other portion of the Campus, the Lessee shall cause the contractors to maintain, Workers' Compensation Insurance covering such contractors on the Campus as required by the laws of the State of Arkansas. The Workers' Compensation policy must include Coverage B-Employer's liability limits of: Bodily Injury by Accident - Five Hundred Thousand Dollars (\$500,000) each accident; and Bodily Injury by Disease - Five Hundred Thousand Dollars (\$500,000) each employee. The Lessee shall require all contractors and subcontractors performing work under this Ground Lease to obtain an insurance certificate showing proof of Workers' Compensation and Employer's Liability Insurance.

(c) *Property/Business Interruption.* Subject to the additional requirements of the Loan Agreement which shall govern any inconsistency herewith, all times prior to the Termination Date during any construction conducted by or on behalf of the Lessee on or about the Property or any other portion of the Campus, the Lessee shall cause all its contractors to maintain All Risk or Builder's Risk at all times prior to completion of the Project, Completed Value Form Property Insurance covering all physical loss or damage to the Premises covered by the extended coverage endorsement then in use in the State of Arkansas (including vandalism and malicious mischief) in an amount not less than full replacement value; and

(d) *Public Liability.* At all times during the term of this Ground Lease, the Lessee shall maintain a primary Commercial General Liability insurance policy, ISO Form 1992 or later, ("*CGL*") covering all claims for bodily injury and property damage, including loss of use thereof, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, with deductible provisions not to exceed Twenty-five Thousand Dollars (\$25,000) per occurrence, to include personal and advertising injury, general aggregate, products and completed operations aggregate insurance beginning at the completion of each project component, and contract liability to cover all insurable obligations in this Ground Lease. Coverage may be specific for the Project or covered under umbrella or pooled policies. The policy or policies must be on an "occurrence" basis unless waived by the Lessor. The CGL policy shall include contractual liability coverage.

(e) *Errors and Omissions*. The Lessee shall cause to be obtained and maintained Professional Errors and Omissions Insurance covering all architects, engineers, specialists, and consultants in an amount and with coverage subject to the reasonable approval of the Lessor. Coverages shall be specific for the Project and not aggregated with insurance for other undertakings of the insureds.

(f) *Umbrella*. The Lessee shall obtain and maintain an additional umbrella or all risk coverage in an amount of Five Million Dollars (\$5,000,000) in the aggregate, which shall include all insured coverages required by subsections (b), and (d) of this Section.

(g) *Loss Payable Clauses*. The contracts of insurance required by this Section 16 shall contain standard loss payable clauses in favor of any Leasehold Mortgagee, the Lessor, and the Lessee as their respective interests may appear.

(h) *Delivery of Insurance Certificates*. Upon the commencement of this Ground Lease and at each policy renewal date, the Lessee shall furnish or cause to be furnished to the Lessor an insurance certificate or renewal certificate evidencing all insurance required to be carried by the Lessee in accordance with the Ground Lease, listing the Lessor as the certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the Lessee includes contractual liability coverage to insure the indemnity agreement as stated.

(i) *Evidence of Payment of Premiums*. The Lessee shall within twenty (20) days of payment furnish to the Lessor duplicate receipts or satisfactory evidence of the payment of all premiums on any and all insurance required to be carried by the Lessee in accordance with this Ground Lease.

Section 17. Damage and Destruction. (a) *Repair of Damaged Improvements*. Should any building or other structures or improvements constructed and located by the Lessee on or within the Premises be damaged or destroyed by fire or any other casualty whatsoever during the term of this Ground Lease, the Lessee, except as hereafter provided in this subsection (a), shall, within one hundred eighty (180) days from the date of such damage or destruction, commence the work of repair, reconstruction, restoration, or replacement and shall prosecute the same with all reasonable dispatch, such buildings, other structures or improvements shall have been repaired, reconstructed, or restored as nearly as practicable to the same condition as prior to such damage or destruction. Anything in this Ground Lease to the contrary notwithstanding, the period of time within which the Lessee is hereinabove obligated to complete the repair, reconstruction, restoration, or replacement of any buildings or other structures or improvements so damaged or destroyed shall be extended for the period of any delay in said completion not within the reasonable control of the Lessee. The Lessor and the Lessee specifically agree that, except as otherwise provided in this Ground Lease, damage to or destruction of any building or other structures or improvements on or within the Property at any time during the term of this Ground Lease, by fire or any other casualty whatsoever, shall not work a termination of this Ground Lease or authorize the Lessee or those claiming by, through or under the Lessee to quit or surrender possession of the Premises or any part thereof, and shall not release the Lessee in any way from its liability to pay the Lessor the Rent herein provided for, or from any of the provisions of this Ground Lease. However, if any building or other structures or improvements constructed and located by the Lessee on or within the Property shall be damaged or destroyed at any time after payment in full of any debt secured by the Lessee's interest under this Ground Lease, the Lessee shall be relieved of any obligation to repair, reconstruct, restore, or replace the said damaged or destroyed buildings, other structures or improvements upon payment by the Lessee to the Lessor, in a single total payment, of the net proceeds received by the Lessee from the insurance company or companies insuring the same. The Lessee shall also be relieved of any such obligation in the event a Leasehold Mortgagee shall elect to apply insurance proceeds to the reduction of the Lessee's outstanding indebtedness as permitted pursuant to subsection (c) of this Section. The release

of the Lessee from the Lessee's obligation to repair, reconstruct, restore, or replace the said damaged or destroyed building or other structures or improvements shall be conditioned, in addition to the payment by the Lessee of the sums herein enumerated, upon delivery by the Lessee to the Lessor of an instrument releasing, demising, conveying, and transferring to the Lessor all of the Lessee's rights, title, and interest in and to the Premises. Notwithstanding the above, the parties recognize that the Loan Agreement contains provisions governing the actions of the Lessee upon damage or destruction of all or part of the Premises and agree that so long as the Loan Agreement is outstanding, (i) the compliance by the Lessee with the provisions thereof regarding damage or destruction shall constitute compliance by the Lessee hereunder, and (ii) this Ground Lease shall be interpreted in a manner consistent with the provisions of the Loan Agreement, as applicable.

(b) Damages for Failure to Comply with Repair Obligation. If the repair, reconstruction, restoration, or replacement of damaged or destroyed buildings, other structures or improvements is not substantially completed in accordance with subsection (a) hereof within a reasonable time after the date of such damage or destruction (if such completion date is prior to the end of the term of this Ground Lease and if the Lessee is under the affirmative requirement of such subsection (a) to commence the repair, reconstruction, restoration, or replacement), the Lessor may terminate this Ground Lease immediately upon written notice thereof to the Lessee and, in such event, the Lessor shall receive the proceeds of all insurance obtained in accordance with Section 16 of this Ground Lease to the extent such proceeds have not been expended on or committed to such repairs.

(c) Use of Proceeds of Insurance. The proceeds of all insurance obtained in accordance with Section 16 hereof shall be used in accordance with the provisions of the Loan Agreement.

(d) Termination Prior to Completion of Repair. In the event of the termination of this Ground Lease before the expenditure of the full amount of such insurance proceeds in the repair, reconstruction, restoration, or replacement of such damaged or destroyed buildings, other structures or improvements, any unexpended balance thereof, including any interest previously earned by such balance, shall inure to and become the sole property of the Lessor.

(e) Subordination to Leasehold Mortgage. Notwithstanding anything else herein contained, the provisions of the Leasehold Mortgage shall control in all respects the receipt, handling, and application of any and all insurance proceeds, it being acknowledged and agreed that the Leasehold Mortgagee, shall have a first and prior security interest therein.

Section 18. Condemnation. (a) General. The term "condemnation" as used in this Ground Lease means the taking or appropriation of property, or any interest therein, in exercise of the power or right of eminent domain or such taking for public or quasi-public use or any state of facts relating to the taking or appropriation of property which, without an actual taking or appropriation, shall result in direct or consequential damages to the Property or the leasehold interest herein. Such term shall also be deemed to include to the extent not otherwise defined in this paragraph, a temporary taking of the Property or any part thereof or the improvements thereon for a period of one year or more, and the taking of the leasehold interest created herein.

(b) Total Condemnation. If all of the Property (or such substantial portion thereof as shall, in the Lessor's sole discretion, make it economically unfeasible to continue to operate the remaining portion for the purpose herein) is so condemned, this Ground Lease shall terminate on the date title to the Property vests in the condemnor; provided, however, that such termination shall be without prejudice to the rights of the Lessor to recover just and adequate compensation from any such condemnor. If this Ground Lease is terminated as provided in this subsection, the Lessee shall pay the Rent for the year in which the

Property is taken, up to the date of such termination. The Rent shall be payable within sixty (60) days after the date the Ground Lease is terminated.

(c) Division of Award - Total Condemnation. If the property is totally condemned as provided in subsection (b) above, the condemnation proceeds shall be paid as follows:

(i) the Lessee first shall be entitled to receive such portion of the condemnation proceeds as shall equal the principal balance and accrued interest on and all other sums owing under the Leasehold Mortgage which shall be directly paid to such Leasehold Mortgagee.

(ii) the Lessor shall then be entitled to receive the balance of the condemnation proceeds.

(d) Partial Condemnation. In the event of a taking of less than a total taking as provided in subsection (b) above, this Ground Lease shall terminate as to the condemned portion of the Property on the date title to the condemned portion of the Property vests in the condemnor; provided, however, that such termination shall be without prejudice to the rights of the Lessor to recover just and adequate compensation from any such condemnor. The provisions of this Ground Lease shall remain in full force and effect as to the portion of the Property not condemned.

(e) Division of Award - Partial Condemnation. If the property is partially condemned as provided in subsection (d) above, the condemnation proceeds shall be paid as follows:

(i) the Lessee first shall be entitled to receive such portion of the condemnation proceeds as shall equal Leasehold Mortgagee's equitable portion of the principal balance and accrued interest on and all other sums owing under the Leasehold Mortgage. Such amount shall be directly paid to such Leasehold Mortgagee.

(ii) the Lessor shall then be entitled to receive the balance of the condemnation proceeds.

Section 19. Estoppel Certificates. (a) The Lessor and the Lessee will execute, acknowledge and deliver to the other promptly upon request, a certificate certifying as to the following:

(i) Validity of Lease: that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that this Ground Lease is in full force and effect, as modified, and stating the modifications);

(ii) Payment of Rent: the dates through which the Rent under this Ground Lease has been paid;

(iii) Amount of Rent Due: the amount of the Rent then payable; and

(iv) Defaults by the Lessee: that no notice has been given by the Lessor to the Lessee of any failure to comply under this Ground Lease that has not been cured and to the best of its knowledge and belief no Event of Default exists (or, if there has been any notice given or an Event of Default exists, describing the same).

(b) Certificates from the Lessor and the Lessee pertaining to the same matters may be relied upon by any prospective Leasehold Mortgagee or by any prospective assignee of an interest under this Ground Lease or by any prospective sublessee as to all or any portion of the Property.

Section 20. Access to Premises. The Lessor, its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours, subject to the rights of tenants in possession, if any, to inspect the Property in order to determine whether the Lessee is complying with its undertakings, duties, and obligations under this Ground Lease, to make such necessary repairs, additions, improvements, changes, or alterations to the Premises as the Lessor may elect to make in accordance with the terms and provisions of this Ground Lease (the Lessor agreeing to provide five (5) days' written notice of its intent to make such necessary repairs, additions, improvements, changes, or alterations to the Premises, except in the case of an emergency where no such prior notice shall be required), and to exhibit the same to prospective purchasers, operators, mortgagees, or tenants of the Premises. Such entry, inspection and repairs, additions, improvements, changes, or alterations as the Lessor may make of the Premises shall not constitute an eviction of the Lessee in whole or in part, and the Rent shall in no way abate by reason of loss or interruption of the business of the Lessee or otherwise while such work is being done. The Lessor agrees to employ its reasonable efforts to minimize any interruption to the business operations of the Lessee resulting from the Lessor's (or its designated representatives') work in or on the Premises. Nothing herein contained, however, shall be deemed or construed to impose upon the Lessor any obligation or liability whatsoever for care, supervision, repair, improvement, additions, improvement, change, or alteration to the Premises other than as herein expressly provided.

Section 21. Property Subject to Zoning. The Lessee takes the Property subject to all zoning regulations and ordinances now or hereafter in force including, but not limited to, those as to building line and setback.

Section 22. Events of Default and Remedies. (a) *Events of Default Defined.* The following shall be "Events of Default" under this Ground Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used herein, any one or more of the following events:

(i) The Lessee shall fail to pay the Rent at the times specified herein.

(ii) The Lessee shall fail to perform or cause to be performed any other term, covenant, condition, or provision hereof, other than as referred to in (i) above, and to correct such failure within thirty (30) days after written notice specifying such is given to the Lessee by the Lessor. In the case of any such failure that cannot with due diligence be corrected within such thirty (30) day period but can be wholly corrected within a period of time not materially detrimental to the rights of the Lessor, it shall not constitute an Event of Default if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the failure shall be corrected; however, Lessor's failure to perform pursuant to the Sub-Lease Agreement cannot trigger a default by the Lessee hereunder.

(iii) The Lessee shall be adjudicated a bankrupt.

(iv) A permanent receiver shall be appointed for the Lessee's interest in the Premises and such receiver shall not be removed within ninety (90) days after notice from the Lessor to the Lessee to obtain such removal.

(v) The Lessee shall voluntarily take advantage of any debtor relief proceedings under any present or future law whereby the Rent or any part thereof shall be reduced or payment thereof deferred or shall become subject to any such involuntary proceedings and said involuntary proceedings shall not be dismissed within ninety (90) days after notice from the Lessor to the Lessee to obtain such dismissal.

(vi) The Lessee shall make a general assignment for benefit of creditors.

(vii) The Premises or the Lessee's effects or interests therein shall be levied upon or attached under process against the Lessee, and the same shall not be satisfied or dissolved within ninety (90) days after notice from the Lessor to the Lessee to obtain satisfaction or dissolution thereof.

(b) *Remedies.* Subject to the provisions of Section 24(c)(d)(e) and (f) hereof, upon the occurrence of an Event of Default, the Lessor may pursue one of the following remedies:

(i) Terminate this Ground Lease immediately upon written notice thereof to the Lessee, and thereafter, without legal process, enter upon and take possession and control of the Premises to the complete exclusion of the Lessee. The Lessor may also demand, collect, and retain all rents due from tenants occupying the Premises, and the Lessor may otherwise treat and occupy the Premises as if this Ground Lease had expired of its own limitation. The failure of the Lessor to exercise such rights after one or more Events of Default shall not be a waiver of the rights of the Lessor upon the occurrence of any subsequent Event of Default; or

(ii) As the Lessee's legal representative, without terminating this Ground Lease, re-let the Premises upon obtaining the written consent of any Leasehold Mortgagee. Such re-letting may be accomplished without advertisement and by private negotiations for such term or terms and at such rental or rentals as the Lessor in its sole discretion may deem proper and advisable, with the right to make alterations and repairs to the Premises. Upon each such reletting:

(A) the Lessee shall be immediately liable to pay to the Lessor, in addition to any sums due hereunder, the reasonable cost and expenses of such reletting and of such alterations and repairs incurred by the Lessor; and

(B) subject to applicable law, rents received by the Lessor from such reletting shall be applied: First, to the payment of any costs and expenses of such re-letting and of such alteration and repair; Second, to the payment of Rent due and unpaid under this Ground Lease; and Third, the residue, if any, shall be held by the Lessor, in escrow, and (1) applied to the payment of the Rent as the same shall become due under this Ground Lease and (2) if any balance shall then remain, paid to the Lessee at the termination of this Ground Lease. The Lessor shall in no event be liable to the Lessee for any interest on the said residue.

Section 23. Expiration or Termination. (a) *Extinguishment of the Lessee's Rights.* Upon the termination or expiration of this Ground Lease from any cause, all rights and interests of the Lessee, and all persons whomsoever claiming by, through or under the Lessee (with the exception of the rights of Leasehold Mortgagees arising under Section 24 hereof), shall immediately cease and terminate, and the Premises, including all buildings, improvements, engines, machinery, dynamos, generators, boilers, furnaces, elevators, fire escapes, and all lifting, lighting, heating, cooling, refrigerating, air conditioning, ventilating, gas, electric and plumbing apparatus, appliances and fixtures, as well as other fixtures attached to or within the Premises, and all personal property located thereon, shall thence forward constitute and belong to and be the absolute property of the Lessor or the Lessor's successors and assigns, without further act or conveyance, and without liability to make such compensation to the Lessee or to anyone whomsoever, and free and discharged (other than the Leasehold Mortgages) from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by the Lessee at any time. The Lessee agrees, at the termination of this Ground Lease, to surrender unto the Lessor, all and singular the Premises with then existing buildings, other structures and improvements constructed and

located thereon and therein, in the same condition as when the construction of such buildings, other structures, and improvements was completed, only natural and normal wear and tear excepted, unless the Lessee shall be relieved of the Lessee's obligation to repair, reconstruct, restore or replace damaged or destroyed buildings, other structures or improvements pursuant to Section 17(a) hereof.

(b) *Prepaid Items Assigned.* Upon the expiration of the term of this Ground Lease, or upon the prior termination of this Ground Lease from any cause, all expense items prepaid by the Lessee with respect to constructing, operating, maintaining, and protecting the Premises, including, but not limited to, prepaid insurance premiums, any tax and utility deposits, shall inure to the benefit of and become the property of the Lessor and to this extent the Lessee does hereby transfer, assign and convey any such prepaid expense items to the Lessor.

(c) *Amounts Remaining in Funds and Accounts.* Upon the expiration of the term of this Ground Lease, or upon the prior termination of this Ground Lease from any cause, and subject to the interest of the Lessee and/or Leasehold Mortgagee, any amounts remaining in any fund, account or reserve created in connection with the maintenance of the Property, or the management of the SCGBD, shall inure to the benefit of and become the property of the Lessor and to this extent the Lessee does hereby transfer, assign, and convey any such funds to the Lessor.

Section 24. Mortgaging the Leasehold. The Lessee, and every successor and assign of the Lessee, shall have the right in addition to any other rights granted in this Ground Lease to encumber its interest in this Ground Lease with the Lessor's consent, which consent shall not be unreasonably withheld, under any one or more Leasehold Mortgages, upon the condition that all rights acquired under any such Leasehold Mortgage shall be subject to each of the provisions set forth in this Ground Lease and to all rights and interests of the Lessor herein. In accordance with the foregoing, the Lessor hereby consents to the Lessee's encumbrance of its interest in this Ground Lease pursuant to the Leasehold Mortgage which shall secure outstanding principal indebtedness of no more than \$5,000,000. If, from time to time, the Lessee or the Lessee's successors and assigns shall encumber this Ground Lease with a Leasehold Mortgage, and if the holder thereof delivers to the Lessor an executed counterpart of such Leasehold Mortgage, together with each assignment thereof certified by such holder to be true together with written notice specifying the name and address of such holder and the pertinent recording data with respect to such Leasehold Mortgage, the Lessor agrees that, anything in this Ground Lease to the contrary notwithstanding, from and after the date of receipt by the Lessor of such notice and for the term (duration) of such Leasehold Mortgage, the following provisions shall apply:

(a) *Consent to Amendment.* There shall be no cancellation, surrender or modification of this Ground Lease by the Lessor or the Lessee without the prior written consent of any Leasehold Mortgagee. Notwithstanding the foregoing (but, in any event, subject to a Leasehold Mortgagee's curative rights set forth in subsections (c) and (d) hereof), nothing herein shall be deemed to prohibit the Lessor from terminating this Ground Lease in accordance with its terms or exercising its option to purchase as provided for in this Ground Lease. Except for a refinancing pursuant to this Section 24, there shall be no material modification in the Leasehold Mortgage or related documentation without the Lessor's prior written consent.

(b) *Notices to Leasehold Mortgagees.* The Lessor, upon serving the Lessee with any notice of an Event of Default, failure to comply, or termination, shall simultaneously serve a copy of such notice on any Leasehold Mortgagee. If the Lessor shall serve the Lessee with a notice of a failure to comply with any term, covenant, condition, or provision hereof, the Leasehold Mortgagee shall then have the same period after service of the notice on it as is given to the Lessee hereunder to remedy or cause to be remedied such failure, and the Lessor shall accept performances by or at the instigation of any Leasehold Mortgagee as if it had been done by the Lessee. Any notice required to be given to any Leasehold

Mortgagee shall be posted in the United States mail, postage prepaid, certified, return receipt requested (and wired by telegraphic means or transmitted by facsimile transmission) and addressed to the Leasehold Mortgagee at the address and to the attention of the person designated to the Lessor by such Leasehold Mortgagee to receive copies of such notices and shall be deemed to have been served as of the date the said notice is received or refused by such Leasehold Mortgagee.

(c) Curative Rights of Leasehold Mortgagees. In addition to the rights granted to any Leasehold Mortgagee under subsection (b) of this Section and in the case of any such failure that cannot with due diligence be corrected within such period but can be wholly corrected within a period of time not materially detrimental to the rights of the Lessor and in no event less than an additional period of ninety (90) days, it shall not constitute an Event of Default if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the failure shall be corrected.

(d) Limitation Upon Termination Rights of the Lessor. If the Lessor shall elect to terminate this Ground Lease upon the occurrence of an Event of Default, the Leasehold Mortgagee shall also have the right to postpone and extend the date of termination as fixed by the provisions of this Ground Lease for a period of not more than twelve (12) months from the expiration of the period specified in subsection (c) hereof, provided that the Leasehold Mortgagee shall pay the Rent and other charges required to be paid under this Ground Lease during such period, and provided further, that the Leasehold Mortgagee of this Ground Lease shall forthwith take steps necessary to acquire the Lessee's interest and estate in this Ground Lease by foreclosure of its Leasehold Mortgage, or otherwise, and shall prosecute such action to completion with due diligence. If at the end of the twelve (12) month period, the Leasehold Mortgagee of this Ground Lease shall be actively engaged in steps to acquire or sell the Lessee's interest in the Ground Lease, the time for Leasehold Mortgagee to comply with the provisions of this subsection (d) shall be extended for such period as shall be reasonably necessary to complete these steps with reasonable diligence and continuity.

(e) Assignment. The Lessor agrees that in the event of any foreclosure under any Leasehold Mortgage, either by judicial proceedings or under power of sale contained therein all right, title and interest encumbered by such Leasehold Mortgage may, without the consent of the Lessor, be assigned to and vested in the purchaser at such foreclosure sale subject and subordinate, however, to the rights, title and interests of the Lessor; and, notwithstanding that the Lessor's consent to said assignment shall not have been obtained, any such assignee shall be vested by virtue of such assignment with any and all rights of the party whose estate was encumbered by such Leasehold Mortgage as though the Lessor had consented thereto.

(f) Mortgagee Leases. The Lessor agrees that in the event of a termination of this Ground Lease by reason of any Event of Default, and subject to the rights herein granted to Leasehold Mortgagees, the Leasehold Mortgagee shall have the option, but not the obligation, to enter into a Mortgagee Lease; provided:

(i) the Leasehold Mortgagee shall enter into a Mortgagee Lease within the twelve (12) month period specified in subsection (d) of this Section;

(ii) the Leasehold Mortgagee shall perform and observe all covenants contained in the Mortgagee Lease on the Lessee's part to be performed during such period of time commencing with the date of the execution of the Mortgagee Lease and terminating upon the abandonment or surrender of possession of the Premises under the said Mortgagee Lease; and

(iii) the Leasehold Mortgagee, as Lessee under the Mortgage Lease shall have the same right, title and interest in and to the Premises and the right to use the buildings and improvements thereon as the Lessee had under this Ground Lease.

(g) Agreement Between the Lessor and Leasehold Mortgagee. [blank]

(h) Limitation on Liability of Leasehold Mortgagee. Notwithstanding any other provision of this Ground Lease, the Lessor agrees that any Leasehold Mortgagee permitted under this Ground Lease shall in no manner or respect whatsoever be (i) liable or responsible for any of the Lessee's obligations or covenants under this Ground Lease (nor shall any rights of such Leasehold Mortgagee be contingent on the satisfaction of such obligations or covenants), or (ii) required to cure any Event of Default; provided, however, that if such Leasehold Mortgagee becomes the owner of the leasehold estate created hereunder or becomes the Lessee under a Mortgage Lease, then such Leasehold Mortgagee shall be responsible and liable for all obligations and covenants accruing during such Leasehold Mortgagee's tenure as owner of such leasehold estate or as lessee under a Mortgage Lease.

Section 25. Option to Purchase. Throughout the term of this Ground Lease, the Lessor shall have the right and option to purchase the Lessee's right, title, and interest in and to the Premises.

(a) Exercise Notice. The Lessor may exercise such option to purchase the Lessee's right, title and interest in and to the Premises by delivering written notice (the "**Exercise Notice**") of such exercise to the Lessee.

(b) Purchase Price. If the option to purchase is exercised, the purchase price of the Lessee's right, title, and interest in and to the Premises shall be the principal balance then outstanding of all sums secured by any Leasehold Mortgage then in effect, plus any premium payable on such indebtedness, plus all interest accrued or to accrue on such indebtedness through the date of payment of such indebtedness. This provision for the Lessor's option shall not be in derogation of the Lessor's power of eminent domain.

(c) Closing. The closing of the transfer of the Lessee's right, title and interest in and to the Premises (the "**Closing**") shall be held on or before the date ninety (90) days after the date of the Exercise Notice, on such date and at such time and place as the Lessor shall specify in a notice to the Lessee. At Closing, upon payment of the Purchase Price to the Leasehold Mortgagee, title to the SCGBD shall be conveyed by a limited warranty deed in recordable form executed by the Lessee.

(d) Title. Upon payment of the Purchase Price to the Leasehold Mortgagee, the SCGBD shall be conveyed free and clear of all loans, and shall be subject only to Permitted Encumbrances, and to all matters occurring subsequent to the date of this Ground Lease that would be disclosed by an accurate survey and inspection of the Premises.

(e) Closing Costs. The Lessor shall pay all recording fees for satisfaction of the Lessee's loans, all transfer taxes in connection with the sale of the SCGBD and all recording fees in connection with recording of the deed and assignment and all other closing costs (other than Lessee's legal fees and costs). The purchase price shall be paid to the Leasehold Mortgagee in cash at Closing.

Section 26. Notices. (a) All notices, certificates, demands, requests, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, postage prepaid, return receipt requested, or given when dispatched by facsimile transmission, or by personal delivery addressed as follows:

Inc. If to the Lessee: NorthWest Arkansas Community College Foundation,

Attn: President
One College Drive
Bentonville, AR 72712
Telephone: (479) 619-4321
Facsimile: (479) 619-4185

 If to the Lessor: NorthWest Arkansas Community College
Attn: Dr. Becky Paneitz
One College Drive
Bentonville, AR 72712
Telephone: (479) 619-4190
Facsimile: (479) 619-4118

 If to the Leasehold Mortgagee: _____ Bank
Attn: _____

_____, AR 72____
Telephone: (501) 371-6745
Facsimile: (501) 371-6728

 If to the Arkansas Building Authority: Arkansas Building Authority
Administrator of Real Estate Services
501 Woodlane, Suite 600
Little Rock, AR 72201
Telephone: (501) 682-1833
Facsimile: (501) 682-5589

(b) Either party hereto may, by notice given to each of the other, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent.

(c) Notwithstanding anything contained herein to the contrary, any notice required to be given by the Lessor or the Lessee hereunder shall be deemed to have been given and shall be effective as of the date such notice is received or refused reflected on said notice. All notices, certificates, demands, requests, or other communications made by either party to the other which are required or permitted by the provisions of this Ground Lease shall be in writing.

Section 27. Submission of Matters to the Lessor for Approval. Any matter which must be submitted to and consented to or approved in writing by the Lessor or any matter which must be submitted to the Lessor which may become effective if not denied by the Lessor, as required under this Ground Lease, shall be submitted to the Lessor by hand or mailed by United States certified or registered mail return receipt requested, to the address of the Lessor designated for the giving of notice to the Lessor under Section 26 hereof and shall either be approved or rejected by the Lessor within thirty (30) days after receipt unless a shorter period of time is expressly stated elsewhere herein. If the Lessor should fail so to approve or reject within such thirty (30) day period as provided for herein, the Lessor's approval shall be assumed to have been unconditionally granted and the Lessee shall have the right to proceed on such matter so submitted. The Lessor shall inform the Lessee in writing of its rejection or approval of such submitted matter by United States certified or registered mail, return receipt requested, to the address

of the Lessee designated for the giving of notice to the Lessee in Section 26 hereof. Any review by the Lessor of any matter submitted to the Lessor is for the Lessor's own convenience and purpose only. By undertaking such review, the Lessor does not obtain or have any liability to the Lessee or any other person, including, without limitation, the insurers and lenders of the Lessee.

Section 28. Holding Over by the Lessee. The Lessee shall not use or remain in possession of the Premises after the termination of this Ground Lease; however, Lessee shall have a reasonable amount of time thereafter to vacate the Premises. Any holding over, or continued use or occupancy by the Lessee after the termination of this Ground Lease, without the written consent of the Lessor, shall not constitute a tenant-at-will interest in behalf of the Lessee. There shall be no renewal whatsoever of this Ground Lease by operation of law.

Section 29. Environmental Matters. Lessee covenants, represents, and warrants that Lessee's use of the Premises shall not and will not involve the use, storage, generation, or disposal of Hazardous Materials (as defined by the USEPA), and that Lessee shall not cause or permit any Hazardous Materials to be brought, used, stored, generated, or disposed on or about the Premises by Lessee, its agents, employees, contractors, subcontractors, or invitees (collectively "*Lessee's parties*"), and in compliance with all laws, including, without limitation, Environmental Laws and with all governmental authorities. Lessee shall be subject to all penalties of the Law should Hazardous Materials be found on the Premises.

Section 30 Miscellaneous. (a) *No Waiver of Rights by the Lessor.* No failure of the Lessor to exercise any power given the Lessor hereunder or to insist upon strict compliance by the Lessee with its undertakings, duties and obligations hereunder, and no custom or practice of the parties hereto at variance with the provisions hereof shall constitute a waiver of the Lessor's right to demand exact compliance with the provisions contained in this Ground Lease.

(b) *Rights are Cumulative.* All rights, powers, and privileges conferred herein upon both parties hereto shall be cumulative.

(c) *Provisions are Binding Upon Assigns and are Real Covenants.* It is mutually covenanted, understood and agreed by and between the parties hereto, that each of the provisions of this Ground Lease shall apply to, extend to, be binding upon and inure to the benefit or detriment of not only the parties hereto, but also the legal representatives, successors and assigns of the Lessor and the Lessee hereto, and shall be deemed and treated as real covenants running with the Property during the term of this Ground Lease. The parties further acknowledge and agree that the Leasehold Mortgagee and their respective successors and assigns shall be deemed third party beneficiaries hereunder. Whenever a reference to the parties hereto is made, such reference shall be deemed to include the legal representatives, successors and assigns of said party, the same as if in each case expressed.

(d) *Applicable Law.* This Ground Lease shall be governed, construed, performed and enforced in accordance with the laws of the State of Arkansas.

(e) *All Genders and Numbers Included.* Whenever the singular or plural number, or masculine, feminine, or neuter gender is used in this Ground Lease, it shall equally apply to, extend to, and include the other.

(f) *Invalidity of Provision or Part Thereof.* In the event any provision, or any portion of any provision of this Ground Lease is held invalid, the other provisions of this Ground Lease and the remaining portion of said provision, shall not be affected thereby and shall continue in full force and effect.

(g) *Time is of the Essence.* All time limits stated in this Ground Lease are of the essence of this Ground Lease.

(h) *Section Captions are to be Disregarded.* The captions of the numbered sections of this Ground Lease are for purposes of identification and convenience only and are to be completely disregarded in construing this Ground Lease.

(i) *Subordination.* **NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN, THE LESSOR AGREES THAT THE FINANCING OF THE ACQUISITION, CONSTRUCTION, AND FURNISHING OF THE SCGBD WILL DIRECTLY BENEFIT THE LESSOR'S OPERATIONS, AND THE LESSOR AGREES THAT ITS INTEREST IN AND TO THE PROJECT AND THE RENTS, REVENUES, ISSUES, AND PROFITS RELATING TO THE OPERATION OF THE SCGBD, INCLUDING, WITHOUT LIMITATION, ALL INSURANCE PROCEEDS, AND GENERAL REVENUES, AS WELL AS ANY AND ALL RIGHTS TO ANY AND ALL CONTRACTS, AGREEMENTS, AND OTHER INSTRUMENTS IN CONNECTION WITH THE DESIGN, ACQUISITION, CONSTRUCTION, EQUIPPING, INSTALLATION, AND OPERATION OF THE SCGBD, INCLUDING, WITHOUT LIMITATION, ALL ASSIGNED AGREEMENTS SHALL BE JUNIOR AND SUBORDINATE TO THE INTEREST OF THE LEASEHOLD MORTGAGEE AS GRANTED OR PROVIDED IN ANY OF THE LEASEHOLD MORTGAGES (COLLECTIVELY, THE "MORTGAGE COLLATERAL") BOTH DURING THE TERM OF THIS GROUND LEASE AND THEREAFTER. SO LONG AS ANY OF THE INDEBTEDNESS CREATED, EVIDENCED, OR SECURED BY THE LEASEHOLD MORTGAGE REMAINS OUTSTANDING AND UNPAID, THE LESSOR SHALL NOT EXERCISE ANY RIGHTS OR REMEDIES WITH RESPECT TO THE MORTGAGE COLLATERAL WITHOUT OBTAINING IN EACH INSTANCE THE PRIOR WRITTEN CONSENT OF THE LEASEHOLD MORTGAGEE.**

(j) *Entire Agreement Contained Herein.* The making, execution and delivery of this Ground Lease by the Lessee has not been induced by any representations, statements, covenants or warranties by the Lessor except for those contained in this Ground Lease. This Ground Lease constitutes the full, complete and entire agreement between and among the parties hereto; no agent, employee, officer, representative or attorney of the parties hereto has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith modifying, adding to or changing the provisions of this Ground Lease. No amendment of this Ground Lease shall be binding unless such amendment shall be in writing, signed by both parties hereto and approved by the Leasehold Mortgagee, and attached to, incorporated in and by reference made a part of this Ground Lease.

(k) *No Partnership or Agency.* Nothing in this Ground Lease is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between the parties. The parties hereby expressly disclaim any intention of any kind to create any partnership or agency relationship between themselves. Nothing in this Ground Lease shall be construed to make either party liable for any of the indebtedness of the other, except as specifically provided herein.

(l) *Limitation of Liability.* Notwithstanding anything herein to the contrary, the liability of the Lessee hereunder (including, but not limited to its indemnity obligations) under this Ground Lease shall be "non-recourse" and, accordingly, the Lessor's sole source of satisfaction of such obligations shall be limited to the Lessee's interest in the Property and the SCGBD and the rents, issues and surplus related thereto, and the Lessor shall not seek to obtain payment from any person or entity comprising the Lessee or from any assets of the Lessee other than those described herein, notwithstanding the survival of any obligation of the Lessee beyond the term hereof. Further, it is agreed and understood between the parties

that the Lessee is entering into this Ground Lease in furtherance of its exempt purposes set forth in Section 501(c)(3) of the Internal Revenue Code of 1986 as amended and not to obtain any financial benefit whatsoever. As an inducement to the Lessee to enter into this Ground Lease, the Lessor has entered will enter into the Sub-Lease Agreement whereby the Lessor agrees to perform the Lessee's duties and obligations under this Ground Lease. Accordingly, the Lessee shall not be liable to the Lessor or any other party (including indemnity obligations) on account of the Lessor failing to perform such duties. However, nothing hereunder shall relieve the Lessee of the obligation to finance the construction and design of the Project or the payment of rent hereunder.

Notwithstanding any provision of this Ground Lease to the contrary, this Ground Lease will not terminate either by operation of this Ground Lease or at the option of the Lessor where Lessee's failure to observe any provision of this Ground Lease is caused in whole or in part by Lessor's failure to fulfill the Lessee's duties hereunder as required by the terms of the Sub-Lease Agreement.

(m) Recordation of Memorandum of Lease. The Lessor and the Lessee agree that the parties shall execute, seal, acknowledge and deliver simultaneously with the execution of this Ground Lease, in recordable form, a memorandum of lease setting forth the basic terms hereof.

(n) Counterparts. This Ground Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed original and all of which, when taken together, shall constitute one in the same document. The signature of any party to any counterpart shall be deemed a signature too, and may be appended to, any other counterpart.

(o) No Waiver of Sovereign Immunity. Nothing in this Ground Lease shall be construed to waive the sovereign immunity of the State of Arkansas or any entity thereof, including Lessor.

(p) Conflicting Documents. This Ground Lease is subject to the provisions of the Loan Agreement and in the event of a conflict between this Ground Lease and the Loan Agreement, the Loan Agreement shall govern and control.

(q) Required Disclosures. Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of terms of this contract. Any Lessee, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the Lessor.

(r) No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall have otherwise agreed in writing, the fee title to the Property and the leasehold created hereby shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold by the Lessor or the Lessee or by a third party, by purchase or otherwise.

(s) Audits. The Lessor may, at its option and at its own expense, and during customary business hours, conduct internal audits of the books, bank accounts, records and accounts of the Lessee. Audits may be made on either a continuous or a periodic basis or both, and may be conducted by employees of the Lessor, by the Arkansas Legislative Auditor or by independent auditors retained by the Lessor desiring to conduct such audit, but any and all such audits shall be conducted without materially or unreasonably or unnecessarily interrupting or interfering with the normal conduct of the business affairs by the Lessor.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Ground Lease Agreement to be duly executed in duplicate counterparts each of which shall be deemed to be an original, the day and year first above written.

LESSOR:

BOARD OF TRUSTEES OF NORTHWEST ARKANSAS
COMMUNITY COLLEGE DISTRICT

By _____

Title: President

STATE OF ARKANSAS)
)
_____ COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Becky Paneitz whose name as President of the Board of Trustees of Northwest Arkansas Community College District, a _____, is signed to the foregoing Ground Lease, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Ground Lease, she, as such officer and with full authority, executed the same voluntarily for the consideration uses and purposes as set forth in the foregoing Lease Agreement and as the act of said Board of Trustees of Northwest Arkansas Community College District.

Given under my hand and official, notarial seal this ____ day of _____, 2008.

[SEAL]

Notary Public
My commission expires:

[The remainder of this page is intentionally left blank.]

LESSEE:

**NORTHWEST ARKANSAS COMMUNITY COLLEGE
FOUNDATION, INC.**

By _____

Title: President

STATE OF ARKANSAS)
)
_____ COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that _____ whose name as President of Northwest Arkansas Community College Foundation, Inc., a non-profit corporation duly organized and validly existing under the laws of the State of Arkansas, is signed to the foregoing Ground Lease, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Ground Lease Agreement, he, as such officer and with full authority, executed the same voluntarily for the consideration uses and purposes as set forth in the foregoing Ground Lease and as the act of said Northwest Arkansas Community College Foundation, Inc.

Given under my hand and official, notarial seal this ____ day of _____, 2008.

[SEAL]

Notary Public
My commission expires:

EXHIBIT "A-1"

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "A-2"

PLAT OF THE PROPERTY

EXHIBIT "B"

CONSTRUCTION DOCUMENTS

EXHIBIT "C"

MANAGE AND MAINTAIN AGREEMENT

EXHIBIT "D"

ACCESS EASEMENT AREAS

EXHIBIT "E"

CONSTRUCTION EASEMENT AREAS

DRAFT

NORTHWEST ARKANSAS COMMUNITY COLLEGE FOUNDATION, INC.

AND

NORTHWEST ARKANSAS COMMUNITY COLLEGE

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is made and effective as of the ___ day of _____, 2008, by and between NORTHWEST ARKANSAS COMMUNITY COLLEGE FOUNDATION, INC., a non-profit corporation organized and existing under the laws of the State of Arkansas, having its principal office in Bentonville, Arkansas (the "Foundation" or the "Owner"), and NORTHWEST ARKANSAS COMMUNITY COLLEGE, an educational institution organized under the laws of the State of Arkansas, having its principal place of business in Bentonville, Arkansas (the "College").

Recitals

The Foundation and the Board of Trustees for Northwest Arkansas Community College (the "Board of Trustees") have entered into a Ground Lease Agreement, dated as of _____, 2008, (hereinafter the "Ground Lease") by the terms of which the Foundation is obligated to design, construct and finance the Project (as defined herein) for and on behalf of the College. Pursuant to and in accordance with the terms and conditions of this Lease, the Foundation hereby leases the Project to the College, and the College agrees to lease the Project and perform such other duties as set forth herein. The legal description for the leased Premises hereunder is set forth in Exhibit A hereto.

In consideration of the mutual promises and covenants herein contained, the Foundation and College agree as follows:

1. **Term.** The Owner leases to the College, and the College leases from the Owner, subject to the terms and conditions set forth in this Lease, the Project (as defined in the Ground Lease), which shall commence on the date the Project is substantially complete and shall expire on the earlier of (i) _____ or (ii) the first date on which the indebtedness incurred in connection with the construction of the Project and secured by the Project is paid in full and all associated Leasehold Mortgages (as defined in the Ground Lease) are released, unless otherwise extended or sooner terminated in accordance with the provisions hereof.
2. **Rent.** In consideration of \$_____ per year rent, represented by \$_____ cash in advance paid for the initial term of this Lease, in providing a desirable financing mechanism for the development of the Project, and for other valuable consideration, the College hereby delivers in full rent for the term of the leasehold

estate. **[WILL INTERST ON THE DEBT AND CLOSING COSTS BE PAID BY THE FOUNDATION OR THE COLLEGE?]**

3. General Description of Project. The property to be leased by the College under this Lease is an approximately 42,000 square foot building known as the Shewmaker Center for Global Development, including the building, fixtures, machinery, and equipment therefor belonging or to belong to the Owner, located on the College campus in the City of Bentonville, Arkansas – as such is more fully described in the Ground Lease. It is understood that the building and its design and specifications are still under development.
4. Completion of Construction of the Project. The College hereby agrees to and assumes the responsibility of managing, overseeing and completing the design and construction of the Project on the Property (as defined in the Ground Lease). However, the Owner shall provide the financing for the design and construction of the Project. In connection with these duties, the College shall fulfill all of the Foundation's duties and obligations set forth in the Ground Lease, all Leasehold Mortgages, any loan agreements entered into with respect to a Leasehold Mortgage and the Construction Documents with respect to the construction and design of the Project on the Premises (as defined in the Ground Lease).
5. Management of Project.
 - a. Substantial Completion. After construction is substantially complete, as such term is defined in the documents directing the construction of and providing the plans and specifications for the Project, the College will be responsible for providing classrooms and offices for students, faculty and staff of the College in the Project, and for maintaining the physical and financial integrity of the Project. It shall be the obligation of the College to effectively and efficiently manage the Project so as to comply with the Owner's responsibilities with respect to the operation, management, reporting requirements, maintenance, repair, modification and use of the Project as well as any insurance requirements under the Ground Lease, all Leasehold Mortgages and any loan agreements related to such Leasehold Mortgages as well as all applicable legal and regulatory requirements.
 - b. Maintenance and Repair. The College will cause the Project to be maintained in good repair at all times, including but not limited to security, cleaning, painting, plumbing, grounds care and such other maintenance and repair work as may be reasonably necessary, subject to any reasonable limitations imposed in writing with the Owner's consent, which shall not be unreasonably withheld, by the Owner, in addition to those contained herein, but in any event in compliance with any applicable requirements of the Ground Lease, any Leasehold Mortgage and all loan agreements entered into in connection with any Leasehold Mortgage. Incident thereto, the following provisions will apply:

- (1) reasonable and customary attention will be given to preventive maintenance in accordance with the College's existing practices, policies, procedures, rules and regulations;
- (2) if the College determines it to be necessary, the College will hire qualified independent contractor(s) for the maintenance and repairs beyond the capability of its regular maintenance employees. The costs and expenses incurred in connection with any such independent contractor shall constitute expenses which shall be borne by the College; and
- (3) the College will purchase all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Project, employ qualified personnel to manage and maintain the Project and all such purchases as well as salaries and benefits for Project Personnel shall be expenses which shall be borne by the College.
- (4) all costs and expenses associated with the maintenance and operation of the Project shall be borne by the College, regardless whether any particular cost or expense is specifically addressed in this Agreement.

c. Capital Improvements.

- (1) The College may from time to time, with the prior written consent of the Owner, plan and carry out necessary capital improvements following the completion of the Project, subject in each instance to the terms of this Agreement, the Ground Lease, all Leasehold Mortgages and any loan agreements related to such Leasehold Mortgages.
- (2) The College shall provide the Owner with advance written notification (hereinafter "Work Notification") of any proposed capital improvement work to be performed in excess of \$20,000.00. The Work Notification shall be provided to the Owner as far in advance of the work as possible and shall consist of a general description of the work, required building materials, when it will occur, its location by building and room, and identification of the building and rooms which the work may contact or disturb. The College shall also provide to the Owner any other information the Owner may reasonably request with regard to the Work Notification or the work described therein.
- (3) Any work carried out pursuant to this Section 5(c) shall be planned and carried out in compliance with this Agreement, the Ground Lease, all Leasehold Mortgages and any loan agreements related

to such Leasehold Mortgages. and in a manner that minimizes to the extent practicable any disruption to or interference with the use of the Project. The College shall be responsible for obtaining any and all required third party consents and approvals.

- (4) No capital improvements shall be undertaken that will diminish the value or utility of the Project.
 - (5) Capital improvements carried out pursuant to this Section 5(c) or otherwise shall be considered expenses which shall be borne by the College, notwithstanding the application of any accounting standards or policies that might not categorize such improvements as current expenses.
- d. Utilities and Services. The College will make timely arrangements for water, electricity, gas, cable, phone, garbage collection services, trash disposal, landscape maintenance and vermin extermination as well as any other necessary utilities for the Project. The College is authorized to make such contracts on behalf of the Owner as may be necessary to secure such utilities and services and all costs or expenses associated therewith shall be considered expenses which shall be borne by the College. Any contract entered into by the College on behalf of the Owner shall be solely the responsibility of the College and all liabilities and costs associated therewith shall be solely borne and paid by the College.
- e. Employees. All on-site personnel will be employees of the College that are qualified to perform the respective tasks and responsibilities assigned to them. The College will select, hire, pay, supervise and discharge such personnel, in a manner consistent with the College's existing or then existing policies, procedures, rules and regulations, subject to the following conditions:
- (1) The College will coordinate activities and personnel in the interest of good overall management.
 - (2) The compensation, including fringe benefits, of all employees performing on-site functions will be determined by the College. The compensation, including fringe benefits, of all employees expected to perform on-site functions will be paid by the College and shall constitute Expenses which shall be borne by the College. To the extent that the College determines that it is efficient, economical and practical to assign the proposed responsibilities to employees of the College who will provide services to the College that are not related to the Project, then the College may allocate a pro rata portion of such personnel's compensation and fringe benefits as is attributable to Project functions as expenses which shall be borne by the College.

- (3) The College and its employees will strictly adhere to this Lease, the Ground Lease, all Leasehold Mortgages and any loan agreements related to such Leasehold Mortgages and to all policies, procedures, and regulations of the College (including but not limited to smoking, security and drug and alcohol policies) while on the Premises.

f. Records and Reports.

- (1) The College shall maintain accurate books and records with respect to the Project. The Owner or its designee shall have the right during the College's normal business hours to examine, audit and, if the Owner deems necessary, copy the College's books and records pertaining to the Project and to make transcripts thereof. The College shall keep all books and records pertaining to the Project, including all supporting vouchers, for a period of at least three years.
- (2) Not later than sixty (60) days following the end of the Owner's fiscal year, the College shall furnish to the Owner such information as required by the Owner's auditors in order to prepare the Owner's annual audit.
- (3) In addition to the foregoing, the College will timely provide to the Owner such other information with respect to the Project and its operations as the Owner may require from time to time in order to comply with its reporting and budgeting obligations, and any tax reports or filings required to be filed by the Owner with the Internal Revenue Service or any state or local governmental agency.
- (4) The College will provide the Owner with any other records or reports as requested by the Owner, which are required by the Owner in order for the Owner to comply with its duties and obligations under the Ground Lease, all Leasehold Mortgages and any loan agreements related to such Leasehold Mortgages.

g. Specific Management Practices. The College will execute its duties hereunder in a manner consistent with good management practices and existing College practices, but subject in all events to the terms of this Lease.

h. Insurance Requirements. During the construction of the Project and thereafter, the College shall retain and maintain at all times all insurance required of the Owner by the Ground Lease, all Leasehold Mortgages, any loan agreements related to such Leasehold Mortgages, and the Construction Documents as well as existing College practices. All insurance premiums shall constitute expenses, which shall be borne by the College.

- i. Taxes. The College shall be responsible for paying all real and personal property taxes assessed on the Project and the real property leased under the Ground Lease. Any sales taxes due with respect to this Agreement shall be paid by the College.
5. Expenses. All expenses incurred by the College in carrying out its responsibilities under this Lease shall be timely paid and borne by the College.
6. Compliance with Laws. The College and its employees and subcontractors, shall perform all of the services under this Lease in compliance with all applicable rules, regulations, orders, determinations, ordinances, laws or notices of any federal, state or local authority (collectively "laws"), including (but not limited to) any and all laws regarding the environment or hazardous materials. If the College shall refuse to comply with or abide by any rule, order, determination, ordinance, or law of any federal, state, or municipal authority, the Owner, upon giving twenty-four hours written notice to the College, may terminate this Lease or take such other measures as may be permitted hereunder or by law.
7. Limitations on Agent's Actions and Authority. Notwithstanding the authority granted to the College in the other provisions of this Agreement, the College, solely with respect to the Project, shall not do any of the following without the prior written consent of Owner in each instance:
 - a. Enter into any contract that is not cancelable by the Owner or the College on thirty (30) days notice, without penalty;
 - b. Enter into any contract or group or series of related contracts, which, in the aggregate, call for total payments in excess of \$20,000, exclusive of contracts or agreements to provide utility services;
 - c. Institute any legal action without the Owner's consent;
 - d. Execute any deed, note, mortgage or security agreement binding on the Owner or the Project;
 - e. Commit or allow any act or omission, which results in the creation or perfection of any lien or encumbrance on the Project; or
 - f. Fail to comply with any provision of the this Agreement, the Ground Lease, all Leasehold Mortgages, any loan agreements related to such Leasehold Mortgages or the Construction Documents or commit any act or omission that would result in a default under the aforementioned.
 - g. Irrespective of any consent provided by the Owner, take any action that would adversely affect the Owner's status as exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by virtue of being described in Code Section 501(c)(3). Further, the College with not use the Project or the Premises in

any manner that would cause the Owner to incur any unrelated business income under the Code.

8. Assignment. Neither the Owner nor the College shall have any right to transfer, assign, pledge, or hypothecate any of their respective rights, duties or obligations under this Agreement and any attempt to do any of the foregoing shall be null and void and of no force or effect.
9. Term of Agreement; End of Term. This Agreement shall be in effect for a period commensurate with the Ground Lease, except as otherwise provided herein.
10. Events of Default; Remedies.
 - a. The occurrence of any of the following shall constitute an "Event of Default":
 - (1) the College shall have failed to pay or fund any amount required of it under this Agreement, which failure shall persist for five (5) days after written notice thereof;
 - (2) the College shall have failed to observe or perform any other material term or condition of this Lease which failure shall persist for thirty (30) days after written notice thereof; provided, that, if the College has initiated a cure and is pursuing such cure using commercially reasonable efforts and good faith, and such cure shall not be completed within thirty (30) days, then, an Event of Default shall not have occurred until the expiration of ninety (90) days, in any event; or
 - (3) a petition in bankruptcy is filed by or against the College, or in the event the College makes an assignment for the benefit of creditors, takes advantage of any insolvency act, reorganization, state court receivership proceeding or similar debtor relief act.
 - b. Upon the occurrence of an Event of Default, the Owner may exercise one or more of the following remedies, after providing written notice to the College:
 - (1) terminate this Lease by written notice stating a date certain upon which this Lease shall terminate, in which event this Lease shall expire and terminate upon such date as fully and completely as if such date were the stated expiration date of this Lease;
 - (2) with or without terminating this Lease, bring an action for damages, specific performance and/or injunctive relief; or
 - (3) such other rights or remedies as may be available hereunder, at law or in equity.

11. Indemnities & Limitation of Owner's Liabilities. If the Owner (or any of its officers, directors, employees, or members) incurs any extra costs or expenses, liabilities or any other additional payments that it is obligated to make under the Ground Lease, any Leasehold Mortgages, any loan agreement related to such a Leasehold Mortgage or the Construction Documents as a result of the College failing to perform any of its covenants, duties or obligations under this Lease or any of the Owner's obligations under the aforementioned agreements and documents, the College shall fully indemnify the Owner for all such costs and expenses as well as any other payments, including any related legal fees and expenses incurred by the Owner, irrespective as to whether such failure constitutes an Event of Default under this Lease.

All liabilities arising with respect to the operation and maintenance of the Project shall be borne solely by the College, whether arising in tort, by contract (including any contracts entered into by the College in connection with its duties and obligations under this Lease), or otherwise (in any civil or criminal matter). If the Owner (or any of its officers, directors, employees, or members) pays any such liabilities or incurs any expenses in connection with such liabilities (including legal fees and expenses), the College shall fully indemnify the Owner (or any of its officers, directors, employees, or members) for such amounts.

The College shall be solely responsible for any and all environmental type liabilities arising under any federal, state or local law with respect to the Project or its construction, operation or maintenance. If the Owner (or any of its officers, directors, employees, or members) incurs any such liabilities or related costs (including legal fees and expenses), the College shall fully indemnify the Owner (or any of its officers, directors, employees, or members) for such amounts.

Notwithstanding anything herein to the contrary, the liability of the Owner hereunder under this Lease shall be "non-recourse" and, accordingly, the College's sole source of satisfaction of such obligations shall be limited to the Lessee's interest in the Project, and the College shall not seek to obtain payment from any person or entity comprising the Owner or from any assets of the Owner other than those described herein, notwithstanding the survival of any obligation of the Owner beyond the term hereof.

Attention: President
Telephone: (479) 619-4321
Facsimile: (479) 619-4185

If to the Lessor: NorthWest Arkansas Community College
Attn: Dr. Becky Paneitz
One College Drive
Bentonville, AR 72712
Telephone: (479) 619-4190
Facsimile: (479) 619-4118

If to the Lender: _____ Bank
Attn: _____
_____, AR 72____
Telephone: _____
Facsimile: _____

Each mailed notice shall be deposited with the United States Postal Service, in registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner provided above. Each such notice shall be deemed to have been given to, or served upon, the party to whom delivered, upon delivery at the addresses provided above. Any party hereto may change its address for the service of notice hereunder by providing written notice of said change to the other parties hereunder, in the manner specified above, ten (10) days prior to the effective date of said change.

14. Other Duties Under the Ground Lease. Other than the Owner's duty to finance the construction and design of the Project and to pay the rent set forth under the Ground Lease, the College shall be responsible for fulfilling all of the Owner's duties and obligations set forth under the Ground Lease, whether or not specifically mentioned elsewhere in this Agreement.
15. Applicable Law. This Lease and all obligations hereunder shall be construed and interpreted under and in accordance with the laws of the State of Arkansas.
16. Successors and Assigns: Changes. This Lease shall be binding upon the parties hereto, their successors and permitted assigns. Any successor or assignee to the duties and obligations of the College must be approved in advance by the Owner via a written instrument.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Foundation and College by their duly authorized representatives have executed this Lease on the date first above written.

OWNER:

**NORTHWEST ARKANSAS COMMUNITY COLLEGE
FOUNDATION, INC.**

By: _____
President

STATE OF ARKANSAS)
)
_____ COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that _____ whose name as President of Northwest Arkansas Community College Foundation, Inc., a non-profit corporation duly organized and validly existing under the laws of the State of Arkansas, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Ground Lease Agreement, he, as such officer and with full authority, executed the same voluntarily for the consideration uses and purposes as set forth in the foregoing Lease Agreement and as the act of said Northwest Arkansas Community College Foundation, Inc.

Given under my hand and official, notarial seal this ____ day of _____, 2008.

[SEAL]

Notary Public
My commission expires:

COLLEGE:

**NORTHWEST ARKANSAS COMMUNITY COLLEGE
DISTRICT**

By: _____
President

STATE OF ARKANSAS)
)
_____ COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Becky Paneitz whose name as President of the Board of Trustees of Northwest Arkansas Community College District, a _____, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Ground Lease Agreement, he, as such officer and with full authority, executed the same voluntarily for the consideration uses and purposes as set forth in the foregoing Lease Agreement and as the act of said Board of Trustees of Northwest Arkansas Community College District.

Given under my hand and official, notarial seal this _____ day of _____, 2008.

[SEAL]

Notary Public
My commission expires:

Exhibit A

Legal Description



To: NWACC Board of Trustees

From: Linda Dayton, Interim VP for Finance & Administration

Date: July 11, 2008

Re: Approval to Transfer Funds from Pledged Revenue Account for Burns Hall 3rd Floor Renovation

The Administration of NWACC requests a transfer of \$200,000 from the Pledged Revenue account to the College's Maintenance & Operations account to fund the cost of materials, furniture, and equipment essential to the renovation of the 3rd floor of Burns Hall. This request is in accordance with the Board of Trustees' expressed interest in upgrading the space utilized by the Office of the President and the NWACC Foundation.

Recommendation: The administration recommends that the Board of Trustees approve the request for an immediate transfer of \$200,000 from the Pledged Revenue account to the College's Maintenance & Operations account.

Coleman Peterson, Chairperson

Robert Teague, Secretary



To: NWACC Board of Trustees

From: Steve Gates, VP for Advancement

Date: July 11, 2008

Re: Approval of Policy for the Lease/Use of College Property

The Administration of NWACC requests approval of the attached policy for the lease/use of College property. This policy will establish guidelines for approving third-party partnerships related to any College-owned property. The proposed policy links NWACC's educational goals to all of its property; by doing so these goals may be translated into an interactive environment for learning and teaching.

Recommendation: The administration recommends that the Board of Trustees approve the policy for the lease/use of College property.

Coleman Peterson, Chairperson

Robert Teague, Secretary

LAND AND THIRD PARTY USE/VENTURES POLICY

Created July 8, 2008

The NWACC Board of Trustees desire to ensure that land, buildings, and any third-party partner seeking college property for land use, are utilized, developed, and approved in a way that meets the learning objectives of the College as outlined in its Mission and Ends Statements.

The planning and development of the Bentonville Campus and all other College-owned property is central to meeting NWACC's educational and training mandate. NWACC's Bentonville Campus and all other College owned property defines the identity of the College to its stakeholder groups. By linking NWACC's educational goals to all its property, the Board of Trustees hopes to translate these goals and objectives into an interactive environment for learning and teaching.

This Policy establishes guidelines for approving third-party partnerships on any campus or College owned property. Specific guidelines and standards for building construction and site development are subject to the College's Master Facilities Planning procedures and standards. The development of detailed guidelines is not intended to be restrictive but to assist in making choices that will contribute to an overall sense of unity throughout the College and its property holdings.

Third Party and Joint Ventures

The Board of Trustees envisions a future where campus facilities will be provided in part through third party and joint ventures with other agencies or private sector. The College will encourage such partnerships as a way to add value and/or provide learning opportunities for the students of NWACC and the citizens of northwest Arkansas.

The joint venture or partnership, including its business, its offerings, or services, must address the College's mission and align with the College's goals, needs, or priorities.

Any joint venture or partnership with an outside agency or industry must provide for design and construction standards consistent with overall campus design.

Community initiatives related to sporting, recreational or athletic activities must be consistent with the College's mission and must enhance opportunities for students to achieve their educational goals. All initiatives and the programs/services they would deliver must be in compliance with Arkansas Code , the Arkansas Department of Higher Education statutes, codes, and guidelines for Arkansas community colleges and specifically, NorthWest Arkansas Community College.

Joint ventures of the type described above must have an enduring utility and financial benefit for the College and/or the citizens of the service region in order for the partnership to be formed and/or continued.

Suggested Discussion Questions for Review of Requests for Land and Third-Party Use/Ventures

The following questions are intended to serve only as a resource for the Land Use Committee and the College Administration during its discussion and consideration of formal requests. Discussion is not limited to these questions nor is either party required to address every question.

1. In what way(s) is the work, service, or business of the party(ies) represented in the proposal connected to the College's mission?
2. How will the land use proposal add value to the College? How will the proposal financially benefit the college and/or the community?
3. How will the proposal enhance/enrich the College's ability to support student learning?
4. Can the proposed building and its services or programs be sustained without adversely affecting the College's operations and future utilization of the College's grounds?
5. Does the proposal present any challenges to complying with the College's building standards?
6. Does the proposal comply with College's Master Plan, including location, access, parking, and preservation of valued green spaces?
7. Will the initiative, all its requirements for building and site development, the management and operations, and programs/services to be delivered - be in compliance with Arkansas Code, Arkansas Higher Education guidelines, and any other local, county, or state requirements?
8. Can the initiative include in a lease or contractual agreement a natural conclusion to the relationship once the third-party and/or the College has expired?