

NEW MEXICO JUNIOR COLLEGE

BOARD MEETING

Thursday, October 16, 2003

Zia Room - Library

4:00 p.m.

AGENDA

- | | |
|--|----------------|
| A. Welcome | Larry Hanna |
| B. Adoption of Agenda | Larry Hanna |
| C. Approval of Minutes of September 4, 2003 | Larry Hanna |
| D. Correspondence | Pat Chappelle |
| E. President's Report | Steve McCleery |
| F. New Business | |
| 1. Monthly Expenditures Report | Dan Hardin |
| 2. Monthly Revenue Report | Dan Hardin |
| 3. Oil and Gas Revenue Report | Dan Hardin |
| 4. Schedule of Investments | Dan Hardin |
| 5. Consideration of Long Term Ground Lease with NMJC Foundation | Steve McCleery |
| 6. Consideration of Amended NMJC Resolution - Labor Management Relations | Steve McCleery |
| 7. Consideration of Kornegay Trust Endowment Agreement | Steve McCleery |
| 8. Consideration of Jal Proclamation | Steve McCleery |
| 9. Consideration of Auction List | Steve McCleery |
| 10. Consideration of Bid #941 – Purchase of New Vehicles | Dan Hardin |
| 11. Consideration of Bid #942 – Installation of Electrical Service for Welding | Dan Hardin |
| 12. Personnel Consideration – Coordinator of Purchasing | Dan Hardin |
| 13. Consideration of New Staff Position | Rich Fleming |
| G. Closure of Open Meeting | Larry Hanna |
| H. Public Comments | Larry Hanna |
| I. Announcement of Next Meeting | Larry Hanna |
| J. Adjournment | Larry Hanna |

NEW MEXICO JUNIOR COLLEGE

BOARD MEETING

SEPTEMBER 4, 2003

MINUTES

The New Mexico Junior College Board met on Thursday, September 4, 2003, beginning at 4:00 p.m. in the Zia Room of Pannell Library. The following members were present: Mr. Larry Hanna, Chairman; Ms. Patricia Chappelle, Secretary; Mr. Wade Cavitt; Mr. Phillip Jones; Mrs. Yvonne Williams; Mr. Guy Kesner; and Mr. John Hice, Jr.

Mr. Hanna called the meeting to order and welcomed visitors and guests present: Vange Perryman, Hobbs News Sun.

Upon a motion by Mr. Hice, seconded by Ms. Chappelle, the agenda was unanimously adopted, as presented.

Upon a motion by Mr. Kesner, seconded by Mrs. Williams, the board unanimously approved the minutes of August 12, 2003, as written.

Under *President's Report*, Regina Organ gave a power point presentation on the proposed Student Center Remodel and Expansion.

Under *New Business*, Dan Hardin presented the August financial reports and with a motion by Mr. Jones, seconded by Ms. Chappelle, the board unanimously approved the expenditures for August 2003.

Donna Richards presented Bid #940 – Purchase of HP Multi-Function Designjet Scanner 4200 42in. (Q1280A). The administration recommended acceptance of the bid from The Cad Store for \$13,750. Upon a motion by Ms. Chappelle, seconded by Mrs. Williams, the board unanimously accepted the recommendation.

Dr. McCleery presented a request to transfer \$1.6 million into the capital fund for the Student Center remodel and expansion. After some discussion and upon a motion by Ms. Chappelle, seconded by Mr. Hice, the board unanimously approved the request.

Richard Fleming presented a request for a second Professor of Reading/Writing position in Transitional Studies. Upon a motion by Mr. Jones, seconded by Mrs. Williams, the board unanimously approved the request.

The next regular board meeting was scheduled for October 16, 2003, beginning at 4:00 p.m. in the Zia Room of Pannell Library. Mr. Hanna informed the board that Mr. Wayne Newton will provide all day board training on November 19, 2003.

Upon a motion by Mr. Cavitt, seconded by Mr. Kesner, the board meeting adjourned at 5:45 p.m.

CHAIRMAN

ATTEST: _____
SECRETARY

Others present:

Mary Jane Ward
Regina Organ
Bill Kunko
Dan Hardin
Charley Carroll
C.c. Nelson
Richard Morris
Rudy Rascon
Lance Caviness
Richard Fleming
Jason Anderson
Sam Oswald
Pat Gorman
Donna Richards
Bill Morrill
Robert Bensing
Greg Hammond
Renee Wharton
Dallas Hulsey

NEW MEXICO JUNIOR COLLEGE

Office of the President

August 27, 2003

Ms. Deby Beran

Re: Official Warning Of Inadequate Job Performance

Dear Ms. Beran:

Serious problems have been brought to my attention concerning your job performance. These problems must be immediately corrected as they directly affect your ability to perform your essential duties as accounting supervisor.

As you know, the college is currently involved in the audit procedure. I am advised that you are not cooperating with the Auditors. You were not prepared for the audit and you had not closed out and reconciled the accounts receivable prior to the audit. Your working relationships with other staff members in the Business Office have deteriorated. Other staff members have been required to approve your journal entries. You called in an employee who was no longer employed in the business office to close out the year rather than training or instructing employees working in the business office. You have demonstrated difficulty working with your fellow business office employees.

These problems must be corrected immediately. If you fail to do so, you will be placed on probationary status, which may result in suspension or dismissal. Hopefully, you will correct these performance problems so that further action becomes unnecessary.

Very truly yours,



Steve McCleery, Ed.D.
President



New Mexico Junior College

Business Office
5317 Lovington Highway
Hobbs, New Mexico 88240

September 4, 2003

Dr. Steve McCleery
New Mexico Junior College
5317 Lovington Highway
Hobbs, NM 88240

Dear Dr. McCleery:

I am writing this as my requested response to your letter. I can see how my actions reflected badly on NMJC and myself. I never intended that in any way at any time. I can assure you that I will keep your letter and conversation uppermost in my mind in the future. My attention will be directed at how my actions are perceived and received by others in this department, on campus, and outside NMJC. Please accept my apology and acknowledgment of responsibility for my actions and whatever repercussions there may be.

Sincerely,

Deby Beran

Deby Beran, Accounting Supervisor
dberan@nmjc.cc.nm.us
(505) 392-5248 fax (505) 392-2526

Deby Beran

Deby,

Thank you for your response
to my request.

Sincerely,

Steve

NEW MEXICO JUNIOR COLLEGE

Vice President for Finance

To: New Mexico Junior College Board Members
From: Dan Hardin
Date: October 9, 2003
RE: Expenditure and Revenue Reports for September

September represents month three or the end of the first quarter of the 2003/2004 fiscal year. The expenditure report reflects expenditure totals that include funds expended and encumbered. The total year-to-date funds expended and/or encumbered through September 2003 is \$9,758,027.00 of which \$2,908,635.00 are encumbered funds.

Year-to-date expenditure for Instruction is below budget as a result of September being the first month of the fiscal year that includes faculty salaries. Academic Support is higher due to early fiscal year expenditures in Library Services. Student Services also has early fall expenditures as they prepared for the Fall semester. Institutional Support has not expended to budget projections, but will have lump sum expenditures as invoices are paid for services such as audit fees. Operation & Maintenance of Plant reports to be above normal budget projections, but as reported last month encumbered funds for liability and property insurance are included in the \$665,740.00. The next area that appears above normal is Internal Services Departments. Included in Internal Services Departments is Computer Services which has \$123,179.00 encumbered for maintenance agreements and lease agreements. To offset expenditures, Computer Services has a CHE required chargeout to Auxiliary Enterprises and Athletics for providing support, this budget year \$50,751.32 is credited each month to Computer Services for this chargeout. Also, Internal Services Departments includes College Communications, which has \$281,848.00 encumbered for lease and maintenance agreements. Unrestricted Student Aid, as well as restricted Student Aid has seasonal expenses with funds expended early in the Fall semester and in early Spring. Auxiliary Enterprises, which include the Bookstore, Housing and Food Services have expended funds for the Fall Semester for cost of goods sold and \$250,000.00 encumbered for the Food Service Contract. Athletics has expended funds for the Grant-in-Aid for the various athletic sports.

Restricted Funds include Grants and Student Aid. Grant expenditures will increase as we get into October, many of the Grants have different fiscal years than the college and are working on their budgets. Student Aid has had large payouts in the Pell Grant and Direct Loans.

Plant Fund expenditures were mainly for institutional projects specifically Technology Upgrades and funds encumbered for various other projects. GOB projects include funds encumbered for the Infrastructure upgrade, JASI Administrative Software, and Smart Classrooms.

Total expenditures through September of 2003 is \$9,758,027.00

The Revenue picture for September appears to be on track. Tuition and Fees, Student Activities, and Auxiliary Enterprises had the normal Fall semester rush. Oil and Gas revenue has been strong, property tax revenue comes mainly in late fall and late spring, and all other unrestricted revenue is on budget.

Restricted revenue had a large drawdown from Pell Grant and Direct Loans.

Total Revenue through September is \$7,697,905.00.

In the Oil and Gas report the actual Oil and Gas revenue for July and August is reported, with July being \$103,710.00 over budget and August being \$98,292.00 over budget.

The Investment report reflects the deposit of \$500,000.00 into the LGIP fund in September. Of the \$8,125,000.00 invested with LGIP, \$5,975,655.69 is designated as Capital Projects or 74%.

This is the Financial Report for September 2003.

NEW MEXICO JUNIOR COLLEGE

Expenditure Report

September 2003

25% of Year Completed

Fund	2002-03			2003-04			
	Final Budget	Year-to-Date Expended or Encumbered	Percentage of Budget Expended	Original Budget	Current Expended or Encumbered	Year-to-date Expended or Encumbered	Percentage of Budget Expended
CURRENT UNRESTRICTED FUND							
Instruction and General:							
Instruction	5,012,174	1,058,371	21%	5,297,285	544,257	1,076,506	20%
Academic Support	890,128	436,919	49%	1,088,548	175,780	453,525	42%
Student Services	1,002,233	363,816	36%	1,214,328	268,801	394,946	33%
Institutional Support	3,581,759	630,976	18%	4,076,531	395,891	654,051	16%
Operation & Maintenance of Plant	1,783,961	488,702	27%	1,687,103	259,395	665,740	39%
Subtotal - Instruction & General	12,270,255	2,978,784	24%	13,363,795	1,644,124	3,244,768	24%
Student Activities	155,236	58,039	37%	307,331	41,943	59,303	19%
Research	0	0	0%	0	0	0	0%
Public Service	0	0	0%	0	0	0	0%
Internal Service Departments	710,422	115,783	16%	372,854	280,155	542,427	145%
Student Aid	281,479	99,334	0%	305,389	18,892	131,775	43%
Auxiliary Enterprises	1,193,795	681,812	57%	1,413,983	390,204	721,254	51%
Athletics	562,053	228,967	41%	671,031	84,014	222,385	33%
Total Current Unrestricted Fund	15,173,240	4,162,719	27%	16,434,383	2,459,332	4,921,912	30%
CURRENT RESTRICTED FUND							
Grants	2,347,254	669,170	29%	2,843,425	143,050	351,603	12%
Student Aid	3,964,907	2,030,604	51%	4,180,325	744,507	2,214,249	53%
Total Current Restricted Fund	6,312,161	2,699,774	43%	7,023,750	887,557	2,565,852	37%
PLANT FUNDS							
Capital Outlay / Bldg. Renewal & Repl.							
Projects from Institutional Funds	5,944,312	1,111,130	19%	6,180,847	112,116	567,417	0%
Projects from State GOB Funds	1,212,900	178,239	15%	4,949,007	795,207	1,669,160	34%
Projects from State STB Funds	0	0	0%	2,000,000	0	0	0%
Projects from Other State Funds	0	0	0%	326,454	0	0	0%
Projects from State B R & R	327,399	62,376	19%	353,945	21,825	33,686	10%
Projects from Auxillary BR&R	19,147	26,002	0%	19,147	0	0	0%
Subtotal - Capital and BR&R	7,503,758	1,377,747	18%	13,829,400	929,148	2,270,263	16%
Debt Service							
Revenue Bonds	0	0	0%	0	0	0	0%
Total Plant Funds	7,503,758	1,377,747	18%	13,829,400	929,148	2,270,263	16%
GRAND TOTAL EXPENDITURES	28,989,159	8,240,240	28%	37,287,533	4,276,037	9,758,027	26%

NEW MEXICO JUNIOR COLLEGE
Revenue Report
September 2003

25% of Year Completed

Fund	2002-03			2003-04			
	Final Budget	Year-to-date Revenue	Percentage of Budget Received	Original Budget	Current Month Revenue	Year-to-date Revenue	Percentage of Budget Received
CURRENT UNRESTRICTED FUND							
Instruction and General:							
Tuition and Fees	1,356,355	686,221	51%	1,653,150	35,428	880,393	53%
State Appropriations	7,376,100	1,844,049	25%	7,684,800	872,158	2,158,624	28%
Advalorem Taxes - Oil and Gas	2,949,084	842,743	29%	3,409,779	441,566	920,580	27%
Advalorem Taxes - Property	1,800,000	56,508	3%	2,000,000	8,934	69,631	3%
Interest Income	50,000	4,202	8%	50,000	3,018	4,781	10%
Other Revenues	307,700	100,790	33%	316,500	48,215	72,616	23%
Subtotal - Instruction & General	13,839,239	3,534,513	26%	15,114,229	1,409,319	4,106,625	27%
Student Activities	43,400	26,797	62%	47,500	716	28,003	59%
Public Service	0	0	0%	0	0	0	0%
Internal Service Departments	10,000	5,872	59%	13,000	2,430	4,886	38%
Auxiliary Enterprises	1,663,000	922,629	55%	1,728,300	391,403	914,704	53%
Athletics	35,400	8,625	24%	35,400	2,875	8,625	24%
Total Current Unrestricted	15,591,039	4,498,436	29%	16,938,429	1,806,743	5,062,843	30%
CURRENT RESTRICTED FUND							
Grants	2,347,254	81,626	3%	2,843,425	157,240	169,364	6%
Student Aid	3,716,407	1,805,836	49%	4,180,325	2,064,393	2,184,919	52%
Total Current Restricted	6,063,661	1,887,462	31%	7,023,750	2,221,633	2,354,283	34%
PLANT FUNDS							
Capital Outlay / Bldg. Renewal & Repl.							
Projects from State GOB Funds	1,212,900	0	0%	4,949,007	253,964	253,964	5%
Projects from State STB Funds	0	0	0%	2,000,000	0	0	0%
Projects from Other State Funds	0	0	0%	0	0	0	0%
Interest Income	105,700	35,975	0%	100,000	18,488	26,815	27%
Total Plant Funds	1,318,600	35,975	3%	7,049,007	272,452	280,779	4%
GRAND TOTAL REVENUES	22,973,300	6,421,873	28%	31,011,186	4,300,828	7,697,905	25%

NEW MEXICO JUNIOR COLLEGE

Oil and Gas Revenue Report

September 2003

25% of Year Completed

		OIL		GAS		COMBINED		
Month of Sales	Distribution	Price per BBL	Lea County BBLs sold	Price per MCF	Lea County MCF sold	Monthly Revenue	2002-03 Original Budget	Variance Over (Under) Budget
Accrual	July	\$26.85	2,991,006	\$4.48	16,317,305	343,217	239,507	103,710
Accrual	August	\$25.32	3,451,574	\$5.26	15,862,113	337,799	239,507	98,292
	July					239,507	239,507	0
	August						239,507	(239,507)
	September						239,507	(239,507)
	October						239,507	(239,507)
	November						239,507	(239,507)
	December						239,507	(239,507)
	January						239,507	(239,507)
	February						239,507	(239,507)
	January						239,507	(239,507)
	February						239,507	(239,507)
	March						239,507	(239,507)
	April						239,507	(239,507)
Y.T.D. Production Tax Revenue						920,523	2,874,084	(1,953,561)
Y.T.D. Equipment Tax Revenue						57	535,695	(535,638)
Total Year-to-Date Oil & Gas and Equipment Tax Revenue						920,580	3,409,779	(2,489,199)

Source: New Mexico Taxation and Revenue Department

Per Johnson, Miller & Co., C.P.A.'s, an accrual is made for oil and gas revenue for the reporting month. September is the monthly budget amount.

NEW MEXICO JUNIOR COLLEGE Schedule of Investments September 2003

25% of Year Completed

Financial Institution	Amount Invested	Date Invested	Maturity Date	Period of Investment (Days)	Account Number	Interest Rate	Interest Earned
State of New Mexico Local Government Investment Pool	8,125,000	N/A	N/A	N/A	7102-1348	0.00%	0
Total Investments	<u>8,125,000</u>						<u>0</u>

Summary of Current Month's Activity	
Beginning amount	7,625,000
Plus: deposits	500,000
Less: withdrawals	0
Capital Projects	5,975,656
Reserves Invested	2,149,344
Total LGIP Investment	8,125,000

Capital Projects	9/30/2003
Technology Upgrade	130,157.25
Workforce Training Center	1,191,750.14
High Tech Start Up	201,296.00
Docutech	175,000.00
Vehicles	175,000.00
CISCO Networking Equipment	4,188.53
Western Heritage Center	500,000.00
Drawings and Master Plan	53,268.75
Baseball Field	199,954.39
Rodeo Arena	11,623.96
Dormitory Landscape	46,012.37
Lea County Beautification	0.00
Circle Drive	95,095.04
Dorm Construction	0.00
Roadway Parking Lot Seal Coat	50,000.00
Dorm Recreation Area	132,706.54
BR&R Carryover	19,539.49
Water Rights	48,246.81
Firing Range Upgrade	1,564.13
Millen Fence/Landscape	100,000.00
Ben Alexander Student Center	2,365,438.94
JASI	474,813.35
Total	5,975,655.69

NOTE: Capital projects total does not include encumbered funds



NEW MEXICO JUNIOR COLLEGE

Office of the President

Memo

DATE: October 6, 2003
TO: New Mexico Junior College Board Members
FROM: Steve McCleery *SM*
SUBJECT: Ground Lease Agreement

At the August Board meeting, the New Mexico Junior College Board approved the Ground Lease Agreement with the Limited Liability Company (LLC) of the New Mexico Junior College Foundation for the intended purpose of constructing campus housing for New Mexico Junior College. Bill Shoobridge has been working with the attorney for State Board of Finance to establish the final copy of the Ground Lease Agreement. Attached you will find the revised copy. The Ground Lease Agreement has also been reviewed by the NMJC Foundation's attorney, Scotty Holloman. The State Board of Finance requires the approval of the Ground Lease and the Signature of the New Mexico Junior College Board Chair. I will testify before the State Board of Finance in November. It is my recommendation that you approve the Ground Lease Agreement.

Thank you for your consideration.

GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "Lease") is made and entered into as of the date set forth on the signature page of this Agreement by and between New Mexico Junior College ("Lessor") and Lea County Student Housing, L.L.C. a New Mexico limited liability company ("Lessee").

WHEREAS, in order to promote the educational opportunities and to assist in the development of student housing facilities and related facilities for student at the Lessor's campus (the "Campus"), Lessor deems it is best that a portion of the Campus be leased to Lessee for the purpose of developing, constructing, operating and leasing such student housing facilities;

WHEREAS, Lessor hereby recognizes and finds that (1) the Rent (as defined herein) to be paid, (2) the construction of the Facilities (as defined herein) and improvements on the Land (as defined herein) for the benefit of Lessor and (3) the residual value of the Facilities at the conclusion of the Term (as defined herein) hereof accruing to Lessor constitute fair and equitable consideration for the conveyance of the leasehold and other interests set forth herein;

WHEREAS, all necessary consents and approvals have been obtained in connection with Lessor entering into this Lease upon the terms and conditions set forth herein;

WHEREAS, Lessor and Lessee have determined to enter into this Lease whereby Lessor will lease two tracts of approximately 5.13 more or less acres of land, [together with a non-exclusive easement for access and utilities over, and along a strip of land and non-exclusive utility easements over, under and along those parcels of land, on the Campus (as defined herein) to Lessee, and Lessee will develop, construct, operate and lease improvements on such land for use by Eligible Tenants (as defined herein) of Lessor and such other persons as set forth herein];

WHEREAS, Lessor and Lessee desire to enter into a ground lease on the terms set forth below;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements, which follow, the parties hereby, agree as follows:

ARTICLE ONE **LEASE OF PROPERTY-TERMS OF LEASE**

Section 1.01 LEASE OF PREMISES. Lessor does hereby let, demise and rent exclusively unto Lessee, and Lessee does hereby rent and lease from Lessor, the real property, together with a non-exclusive easement for access and utilities over, under and along the strip of land and non-exclusive utility easements over, under and along those parcels of land on the Campus, (the "Land") more particularly described on EXHIBIT "A" attached hereto together with the right of access to and use of the streets and roads now or hereafter adjoining the

Land]. Lessee, by execution of this Lease, accepts the leasehold estate herein demised. Subject to the terms hereof, Lessee shall have the right to acquire, construct, equip, improve and operate the Premises (as defined herein). Lessor acknowledges and agrees that it does not have title to the Facilities and the Facility Equipment to be located on the Land.

Section 1.02. HABENDUM. LESSEE SHALL HAVE AND HOLD the Premises, together with all and singular the rights, privileges and appurtenances thereto attaching or anywise belonging, exclusively unto Lessee, its successors and assigns, for the term set forth in Section 1.03, subject to the covenants, agreements, terms, provisions and limitations herein set forth.

Section 1.03. TERM. Unless sooner terminated as herein provided, this Lease shall continue and remain in full force and effect for a term ("Term") commencing on the date hereof and ending at the earlier of (i) the later of (a) midnight on August 31, 2041, or (b) in the event of a Foreclosure on any Permitted Mortgage, midnight on August 31, 2041, or (ii) when all mortgage debt secured by Lessee's leasehold estate has been paid (except as provided in (i)(b) above).

Section 1.04. WARRANTY OF PEACEFUL POSSESSION. Lessor covenants that Lessee, on paying the Rent and performing and observing all of the covenants and agreements herein contained and provided to be performed by Lessee, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term and may exercise all of its rights hereunder. Lessor agrees to warrant and forever defend Lessee's right to such occupancy, use and enjoyment to the Premises against the claims of any and all Persons whomsoever lawfully claiming the same, or any part thereof, subject only to the provisions of this Lease. Except as otherwise expressly provided herein, during the term of this Lease the Premises shall not be subject to any service contracts entered by the Lessor, including, without limitation, contracts for food service, laundry facilities or vending machines. Lessor covenants that it shall not grant any mortgage or lien on or in respect of its fee interest in the Land unless same is subject and subordinate to this Lease and any new lease entered into pursuant to Section 6.02 F.

ARTICLE TWO DEFINITIONS

Section 2.01. DEFINITIONS. In addition to such other defined terms as may be set forth in this Lease, the following terms shall have the following meanings:

"Academic Year" - the period commencing on August 1 of each calendar year during the Term and ending on July 31 of the following calendar year.

"Affiliate" - with respect to a designated Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such designated Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person,

means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through ownership of voting securities or by contract or otherwise.

“Annual Expenses” - with respect to any Academic Year of Lessor; all amounts (a) paid by Lessee during such Academic Year for operating expenses related to the Premises (including, but not limited to, Base Rent; fees paid to the Manager pursuant to the Management Agreement; and sales, property, rental, occupancy, use, gross receipts, excise and any other taxed paid by Lessee and all costs related to the organization and management of Lessee which are incurred in connection with the Premises or the Lessee’s performance of its obligations pursuant to this Lease), (b) paid by Lessee during such Academic Year for capital expenditures for the Premises, (c) paid by Lessee during such Academic Year for principal and interest to any Permitted Mortgagee, (d) paid by Lessee under the Sublease; (e) paid by Municipal Bond Insurer, if any, as expenses as defined in the Sublease; (f) deposited for Reserve Amounts.

“Applicable Laws” - all present and future statutes, regulations, ordinances, resolutions and orders of any Governmental Authority.

“Applicable Regulations” - all present and future rules, policies, procedures and regulations of Lessor pertaining to student academic/social standing, behavior or conduct as set forth in Junior College District publications or otherwise disseminated as official college rules or policy pertaining to such matters.

“Award” - any payment or other compensation received or receivable as a consequence of a Taking from or on behalf of any Governmental Authority or any other Person vested with the power of eminent domain.

“Base Rent” - as defined in Section 3.01.

“Bonds” - Lea County Student Housing Revenue Bonds (New Mexico Junior College Project) Tax-Exempt Series 2004A and Student Housing Revenue Bonds (New Mexico Junior College Project), Taxable Series 2004B.

“Business Day” - a day excluding Saturday, Sunday and any Holiday.

“Campus” -College campus of the New Mexico Junior College.

“Commencement of Construction” - the date on which foundation work is begun for the facilities.

“Construction Contract” - as defined in Section 5.01 F.

“Date of Opening” - the date the Facilities are opened for occupancy or use.

“Development Agreement” - the Development Agreement relating to the development of the Facilities.

“Developer” - Century Project Management Partnership, Ltd.

“Eligible Tenant” - any person attending the New Mexico Junior College or any other institution of higher education located in Lea County or any member of the faculty or staff of the New Mexico Junior College or any other institution of higher education located in Lea County.

“Event of Default” - any matter identified as an event of default under Section 11.01.

“Expiration Date” - the expiration date of this Lease.

“Facilities” - all improvements constructed on the Land, including two three story, open corridor buildings and one two-story building which includes approximately 204 beds in 43 four bedroom/two bath apartment units, 16 two-bedroom/one bath apartment units, and one on-site manager unit apartment-style units, a clubhouse and a swimming pool and related facilities for use by students, faculty and staff of Lessor and others as permitted under this Lease or approved by Lessor, together with the Facility Equipment (as defined herein).

“Facility Equipment” - the furniture, furnishings, equipment, machinery and other personal property used in connection with the operation and use of the Premises, which is not permanently affixed to the Facilities.

“Fall Semester” - as defined in Section 13.01.

“Force Majeure” - any (a) act of God, landslide, lightning, earthquake, hurricane, tornado, blizzard and other adverse and inclement weather, fire, explosion, flood, act of a public enemy, war, blockade, insurrection, riot or civil disturbance; (b) labor dispute, strike, work slowdown or work stoppage; (c) order or judgment of any Governmental Authority, if not the result of willful or negligent action of Lessee; (d) adoption of or change in any Applicable Laws after the date of execution of this Lease; (e) any actions by Lessor which may cause delay; or (f) any other similar cause or similar event beyond the reasonable control of Lessee.

“Foreclosure” - a foreclosure or conveyance in lieu of foreclosure.

“Governmental Authority” - any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise) whether now or hereafter in existence with jurisdiction over the Premises.

“Gross Revenues” - with respect to any Academic Year, all gross receipts of Lessee from the Premises, computed on a cash basis and otherwise in a manner reasonably acceptable

to Lessor, including all rent, parking revenues, utilities reimbursement, technology usage fees, laundry and vending machine revenues and interest earned on tenants' security deposits.

"Hazardous Material" - as defined in Section 20.18.

"Holiday" - any day which shall be a legal holiday in the State of New Mexico or a day on which banking institutions in the State of New Mexico are authorized or required by law to close.

"Holiday Contract" - as defined in Section 13.02 B.

"Independent Architect" - the architect, engineer or consultant selected and retained by Lessor to inspect the Facilities on behalf of Lessor.

"Land" - as defined in Section 1.01.

"Leasing Tenants" - as defined in Section 13.02 C.

"Lessor Representative" - the person designated and authorized in writing from time to time by Lessor to represent Lessor in exercising Lessor's rights and performing Lessor's obligations under this Lease; the initial Lessor Representative shall be Dr. Steve McCleery, President of New Mexico Junior College.

"Lessor's Interest" - the fee simple title to the Land and Lessor's interest in this Lease.

"Management Agreement" - the Management Agreement entered into between Lessee and the Manager relating to the operation and management of the Premises.

"Manager" - Century Campus Housing Management, its Affiliate, or another Person approved by Lessor and Lessee.

"Municipal Bond Insurer" - ACA Financial Guaranty Corporation, its successors and assigns, or any other municipal bond insurer of the Bonds, if any.

"Net Cash Flow" - with respect to any Academic Year, the excess, if any, of Gross Revenues over Annual Expenses for such Academic Year.

"Occupancy Rentals" - all rentals and fees paid by Leasing Tenants to occupy housing at the Facilities pursuant to the payments provisions of any Housing Contracts or other leases.

"Permitted Assignee" - (a) any Permitted Mortgagee, any purchaser at a Foreclosure, any Affiliate of a Permitted Mortgage or any other Person selected by a Permitted Mortgage (or its successors or assigns) subsequent to a Foreclosure of a Permitted Mortgage (b) any Affiliate of Lessee or (c) any non-profit corporation which has been formed for the purpose of

serving as Lessee hereunder and which has received a Letter of Determination issued by the Internal Revenue Service to confirm its status as a 501 (c)(3) entity.

“Permitted Mortgage” - as defined in Section 6.01.

“Permitted Mortgagee” - as defined in Section 6.02.

“Person” - as individual; a trust; an estate; a Governmental Authority; or a partnership, joint venture, corporation, company, firm or any other entity whatsoever.

“Plans and Specifications” - the plans and specifications for the construction of the Facilities, as such plans and specifications may be amended from time to time as permitted in Section 5.01.

“Premises” - the Land and the Facilities.

“Rent” - Base Rent as defined in Section 3.01.

“Reserve Amounts” - the amounts required to be established and funded pursuant to documents evidencing any loan secured by a Permitted Mortgage or other debt service, operating and capital reserves.

“Semester”/”Semesters” - as defined in Section 13.01.

“Spring Semester” - as defined in Section 13.01.

“Sublease” means the sublease of the Premises between Lessee and Lea County, New Mexico.

“Summer Session” - as defined in Section 13.01.

“Taking” - the actual or constructive condemnation or the actual or constructive acquisition by condemnation, eminent domain, or similar proceeding by or at the direction of any Governmental Authority or other Person with the power of eminent domain.

“Trustee” - the indenture trustee under a trust indenture between Lea County, New Mexico and such trustee relating to the Bonds.

ARTICLE THREE **RENT**

Section 3.01. BASE RENT. Base Rent in the total amount of \$200.00 (TWO HUNDRED DOLLARS) per year for the entire term of this Lease (“Base Rent”) shall be prepaid at the execution of this lease.

ARTICLE FOUR
USE OF PREMISES

Section 4.01. PURPOSE OF LEASE. Lessee enters into this Lease for the purpose of developing and constructing in accordance with the Plans and Specifications, and thereafter maintaining, the Facilities to provide on-campus housing for Eligible Tenants, and except as otherwise provided herein, the Premises are to be used for no other purposes.

Section 4.02. BENEFIT OF LESSOR. Subject to Section 13.05, Lessee shall lease and hold the Land for the support, maintenance or benefit of Lessor, and the Premises shall be used for a purpose related to the performance of the public and school purposes, duties and functions of the New Mexico Junior College and subject to the Applicable Regulations.

ARTICLE FIVE
CONSTRUCTION

Section 5.01. LESSEE TO PAY COSTS. Lessee will develop and construct, or cause to be developed and constructed, the Facilities on the Land at its own cost and expense. Lessor shall not have any financial obligation or other obligation of any kind under this Lease except as specifically set forth herein.

- A.** Lessee shall engage the general contractor which shall furnish all supervision, tools, implements, machinery, labor, materials and accessories such as are necessary and proper for the construction of the Facilities, shall pay all permit and license fees and shall construct, build and complete the Facilities in a good and workmanlike manner all in accordance with this Lease, the Plans and Specifications and all documents executed pursuant hereto and thereto.
- B.** Subject to the provisions of Section 5.01 D below, Lessee shall have sole control of the selection of construction professional, construction design, means and methods and the final decision regarding construction and operation of the Facilities. All construction, alteration, renovation or additions to the Premises undertaken by the Lessee shall be in conformance with all applicable codes, rules and regulations, including amendments thereto. Lessee shall have the right to contest any such codes for reasonable grounds by ordinary and proper procedures.
- C.** Changes in work and materials specified in the Plans and Specifications are subject to review and approval of the Independent Architect and Lessor Representative; however, minor changes in work or materials (changes in work or materials not exceeding \$10,000.00), not affecting the scope or general character of the Facilities may be made in the Plans and Specifications at any time by Lessee without the approval of the Independent Architect or the Lessor Representative. Lessee shall notify the Independent Architect and the Lessor Representative of any changes in work or materials that require the

Independent Architect's and the Lessor Representative's approval and if either fail to respond within five (5) business days after receipt of Lessee's notice, it shall be deemed that the Independent Architect or the Lessor Representative, as the case may be, has approved any such change.

- D. The Lessor Representative has previously reviewed and approved the Plans and Specifications. After completion of the Facilities, at least 60 days prior to undertaking any material structural alteration, renovation or remodeling of the Facilities during the Term, Lessee shall submit plans for such alteration, renovation or remodeling to the Lessor Representative. The Lessor Representative shall either approve, which approval shall not be unreasonably withheld, or disapprove and such alteration, renovation or remodeling within thirty (30) days after receipt of such request from Lessee. If the Lessor Representative fails to respond within such thirty (30) day period, it shall be deemed that approval has been given for any such alteration, renovation or remodeling.**
- E. Subject to Force Majeure, Lessee covenants that substantial completion of the Facilities shall occur no later than August 10, 2005, with all units ready for occupancy.**
- F. Prior to Commencement of Construction, Lessee shall deliver to the Lessor Representative, (1) a copy of the signed Development Agreement between Lessee and the Developer for the development of the Facilities, and (2) a copy of the payment and performance bonds in an amount equal to the contract price set forth in the Construction Contract between Lessee and the general contractor for the construction of the Facilities. Lessee shall have the right to delegate its obligation under this Article to the Developer pursuant to the Development Agreement.**
- G. Lessee shall, or shall require the Developer to, upon written request of Lessor, make, in such detail as may reasonably be required, and forward to Lessor, reports in writing as to the actual progress of the construction of the Facilities. During such period, the construction work shall be subject to inspection by the Independent Architect and by authorized personnel of Lessor in order to verify reports of construction, determine compliance with safety, fire and building codes, determine compliance with approved construction plans or such other inspections as may be necessary in the reasonable opinion of the Lessor Representative.**
- H. Before erecting or placing any sign upon the Premises, Lessee shall submit the design and specifications of such sign to the Lessor Representative for approval, which approval shall not be withheld if such signage is consistent with Lessor's current signage policy or such signage was included in the Plans and Specifications.**

- I. As to those portions of the Land, which are non-exclusive access easements, Lessor shall maintain the existing roadways and drives located thereon. As to those portions of the Land, which are non-exclusive utility easements, Lessee shall pay the costs of installing and maintaining any utility service lines needed to serve the Facilities.

Section 5.02. PERSONAL PROPERTY. During the Term hereof, all Facility Equipment shall be and remain the property of Lessee.

Section 5.03. ACCESS. Lessee shall permit Lessor's agents, representatives or employees to enter on the Premises at reasonable times for the purposes of review and inspection as provided in this Lease, to determine whether Lessee is in compliance with the terms of this Lease, or for other reasonable purposes. Subject to the rights of Lessor to observe and enforce their applicable rules and policies, the Lessor, its agents, representatives and employees shall not disturb construction on the Land and shall use best efforts to not disturb tenants of subleased space. Entry onto the Premises by Lessor or Lessor's agents, representatives or employees shall be at their sole risk and Lessee shall not have any liability to Lessor for any damage or injury to Lessor, its agents, representatives or employees resulting from their entry onto the Premises.

Section 5.04. ARCHITECTURAL AND DESIGN CONSIDERATIONS. Lessor shall have the right to approve the layout and general character and appearance of the Facilities, which shall conform to the provisions of this Section 5.04. The Facilities shall consist of student housing which shall be aesthetically pleasing. The housing shall be grouped so that a window does not directly face other windows at close proximity, and public circulation and activities are buffered from the dwelling units. Sources of exterior noise should be screened wherever reasonably possible, and the housing designated and sited so that sound is not created nor directly transmitted from one unit to another by proximity of the units. Potential views into the residential units of the student housing project by persons using adjacent recreational areas should be screened. The building facilities, walkways and parking lots must be designed and constructed in compliance applicable portions of (i) the Americans With Disabilities Act of 1992 and (ii) any state or local regulations for handicapped access. All parking lots and access roads to facilities must meet or exceed City of Hobbs Code requirements. The student housing must be constructed to provide minimum energy consumption and maximum maintenance efficiency. All materials used in construction must be new, and all mechanical components for each mechanical system (i.e., boiler system, heating system, interior components of air conditioning system, exterior components of air conditioning system, etc.) must be from a single manufacturer. The exterior appearance of the Facilities must be designed to conform or be in harmony with the exterior appearance of the Campus. All exterior materials and colors are subject to the approval of Lessor, which approval shall not be unreasonably withheld. All exterior lighting must be of the type and sited so as to provide adequate light for security purposes with minimal lighting spillover into housing windows. Waste disposal areas must be located on site, be easily accessible to a collection vehicle and the residents must be adequately screened. Transformer or other utility

boxes or meters which are placed in landscape areas or on other area within the Premises must be screened by use of building enclosures, landscaping or a combination thereof. All exterior signage shall conform to the standards of the Campus and shall be subject to the approval of Lessor, which approval shall not be unreasonably withheld. Landscaping should create a pleasing and functional outdoor living environment and must be compatible with adjoining landscaping located on the Campus complex. All parking lots and access roads to the Facilities must meet or exceed City of Hobbs Code requirements. Any changes to the aforementioned requirements, whether as a result of the initial construction, any reconstruction or maintenance thereof, shall be subject to the prior written approval of Lessor. Lessor acknowledges that upon its approval of the Plans and Specification all of the requirements set forth in this Section shall be deemed to be approved or waived by Lessor.

Section 5.05. NO REPRESENTATIONS. Except for the express representations and warranties of Lessor set forth in this Lease, Lessee's execution of this Lease shall be conclusive evidence of Lessee's acceptance of the Land in an "as is" condition.

ARTICLE SIX ENCUMBRANCES

Section 6.01. MORTGAGE OF LEASEHOLD. Except as provided in this Article Six and Section 20.19, Lessee may not mortgage, grant a lien upon or a security interest in (or assign as collateral) Lessee's leasehold estate in the Land, Lessee's interest in the Facilities and the Facility Equipment and/or Lessee's other rights to any portion of the Gross Revenues without the prior written consent of Lessor. Lessor hereby consents to the granting of a lien on and security interest in Lessee's leasehold estate in the Land and Lessee's interest in the Facilities and the Facility Equipment and Lessee's other right to the Gross Revenues to or for the benefit of the Municipal Bond Insurer and/or the Trustee (a "Permitted Mortgage") or as contemplated by the Sublease.

Section 6.02. LESSOR'S AGREEMENTS. Lessor hereby agrees to the following for the benefit of any holder of the debt secured by the Permitted Mortgage or beneficiary of the Permitted Mortgage (individually, a "Permitted Mortgage" and collectively, the "Permitted Mortgagees"):

- A. Lessor shall not terminate this Lease (or Lessee's rights hereunder) for any Event of Default without first advising such Permitted Mortgagee, in writing, of such Event of Default and permitting such Permitted Mortgagee to cure such Event of Default on behalf of Lessee within the applicable cure period provided in Article Eleven (an "Applicable Cure Period") after Lessor has given notice to such Permitted Mortgagee. If, during such Applicable Cure Period, the Permitted Mortgagee takes action to cure such Event of Default but is unable, by reason of the nature of the default involved, to cure such failure within such period and continues to attempt to cure such Event of Default diligently and without unnecessary delays, Lessor shall not terminate this Lease. Further, if any Event of Default is not cured within such Applicable Cure Period, or such

longer period as provided in the immediately preceding sentence, and (1) the Permitted Mortgagee shall have given the notices necessary to commence Foreclosure of the liens of its Permitted Mortgage prior to the expiration of such period (unless the Permitted Mortgagee is enjoined or stayed from giving such notices or exercising its right of Foreclosure, in which event the Applicable Cure Period shall be extended by the period of such injunction or stay), and (2) the purchaser or assignee at the Foreclosure fully cures any Event of Default reasonably susceptible of being cured by the purchaser or assignee at the Foreclosure within ninety (90) days after completion of such Foreclosure, then Lessor will not terminate this Lease (or Lessee's rights hereunder) because of the occurrence of such Event of Default provided that Foreclosure is diligently prosecuted. Lessor shall accept amounts paid or actions taken by or on behalf of any Permitted Mortgagee to cure any Event of Default. Nothing under this Section 6.02 A shall be construed to obligate a Permitted Mortgagee to either cure any Events of Default or Foreclose the liens and security interests under its Permitted Mortgage as a consequence of an Event of Default regardless of whether such Event of Default is subsequently cured. If a Permitted Mortgagee or the purchaser or the assignee at Foreclosure cures all defaults reasonably susceptible of being cured by such Permitted Mortgagee, purchaser or assignee, than all other defaults shall no longer be deemed to be Events of Default hereunder. Provided notice is given to a Permitted Mortgagee on the same date as notice is given to Lessee to begin any Applicable Cure Period, the time periods shall run concurrently. If Lessor fails to give the required notice to a Permitted Mortgagee, the Applicable Cure Period, as to such Permitted Mortgagee, shall not begin until notice is given to such Permitted Mortgagee.

- B.** Those Events of Default, which by their very nature, may not be cured by the Permitted Mortgagee (as, for example, the bankruptcy of Lessee) shall not constitute grounds of enforcement of rights, recourses or remedies hereunder by Lessor including termination of the Lease, if a Permitted Mortgagee either before or after a Foreclosure of its Permitted Mortgage (1) makes all payments and performs all obligations hereunder capable of being performed by the Permitted Mortgagee and (2) thereafter continues to comply with those provisions of this Lease with which, by their very nature, the Permitted Mortgagee may comply. Notwithstanding anything to the contrary contained in this Lease, the Permitted Mortgagee shall not be responsible for or obligated to cure any Event of Default for which the Permitted Mortgagee did not receive written notice within the Applicable Cure Period from the occurrence of such Event of Default.
- C.** If a Permitted Mortgagee enforces the rights and remedies pursuant to the terms of its Permitted Mortgage (including Foreclosure of any liens or security interests encumbering the estates and rights of Lessee under this Lease) such enforcement shall not constitute an Event of Default by Lessee hereunder.

- D. If a Permitted Mortgagee should foreclose the liens and security interests of its Permitted Mortgage and should, as a result of such Foreclosure, succeed to any of the rights of Lessee hereunder, then such Permitted Mortgagee shall be subject to all the terms and conditions of this Lease and shall be entitled to all the rights and benefits of this Lease; provided, however, that (1) such Permitted Mortgagee shall not be liable for any act or omission of Lessee; (2) such Permitted Mortgagee shall not be bound by any amendment, modification, alteration, approval, consent, surrender or waiver of or under the terms of this Lease made without the prior written consent of such Permitted Mortgagee; (3) such Permitted Mortgagee shall have the obligation to pay Rent; (4) such Permitted Mortgagee shall be entitled to assign all or any portion of its interest in the leasehold estate, Lessee's interest in the Facilities and the Facility Equipment and/or Gross Revenues, subject to the obligation to pay Percentage Rent under this Lease, without the consent of Lessor; and (5) upon the written request of such Permitted Mortgagee, Lessor shall reaffirm, in writing, the validity of this Lease and that this Lease is in full force and effect. Lessor acknowledges and agrees for itself and its successors and assigns that this Lease does not constitute a waiver by any such Permitted Mortgagee of any of its rights under any Permitted Mortgage or in any way release Lessee from its obligations to comply with the terms, provisions, conditions, representations, warranties, agreements or clauses of such Permitted Mortgage or any other security interest.**
- E. Lessor will not agree to a modification, alteration, amendment or the release or surrender of this Lease without the prior written consent of each Permitted Mortgagee.**
- F. In the event of the termination of this Lease prior to the Expiration Date, except by a Taking pursuant to Article Fifteen hereof, Lessor will service upon any Permitted Mortgagee's written notice that this Lease has been terminated together with a statement of any and all sums which would have at that time been due under the Lease but for such termination and of all other Events of Default, if any, under this Lease then known to Lessor whereupon the Permitted Mortgagee shall have the option to obtain a new lease of the Premises by giving notice to Lessor to such effect within sixty (60) days after receipt by such Permitted Mortgagee of notice such termination, which new lease shall be (1) effective as of the date of termination of this Lease; (2) for the remainder of the Term, and (3) at the same Rent and upon all of the agreements, terms, covenants and conditions hereof (subject, however, to the payment of Percentage Rent). Upon the execution of such new lease, the lessee named therein shall pay any and all sums which at the time of the execution thereof would be due under this Lease but for such termination, but shall not be responsible for any expenses of Lessor, including, without limitation, reasonable attorney's fees, court costs and disbursements incurred by Lessor in connection with the Event of Default and such termination, the recovery of possession of the Premises and the**

preparation, execution and delivery of such new lease. The limitations on the Permitted Mortgagees' responsibility to cure Events of Default imposed by Section 6.02 B shall apply to this Section 6.02 F.

- G. All notices given hereunder by Lessor to Lessee shall also be given concurrently to each Permitted Mortgagee who has previously designated its address in writing to Lessor.
- H. The liability of the Permitted Mortgagee under this Lease shall be limited to the Permitted Mortgagee's interest in the leasehold estate of the Lessee, Lessee's interest in the Facilities and the Facility Equipment and the period during which the Permitted Mortgagee may own the interests of the Lessee hereunder. A Permitted Mortgagee may assign or transfer of its rights and interests in and to this Lease to a Permitted Assignee. Upon the Permitted Mortgagee's assignment or transfer of its rights and interests in and to this Lease to a Permitted Assignee with prior written notice to Lessor, the Permitted Mortgagee shall have not further liability for any obligations arising after such transfer date, which liability shall be borne by the Permitted Assignee.

ARTICLE SEVEN MAINTENANCE AND REPAIR

Section 7.01. UTILITIES. Lessee shall pay or cause to be paid all charges, including any connection fees, for water, gas electricity, sewer and any other utilities used on the Premises throughout the Term. Lessee shall provide, at its expense, all off-site utilities to the perimeter of the Land in sufficient capacity to serve the Project.

Section 7.02. REPAIRS. Throughout the term of this Lease, Lessee shall keep and maintain, or cause to be kept and maintained, the Premises and all facilities located thereon in a good state of repair and of like new appearance, damage caused by casualty, condemnation and force majeure excepted. All mechanical equipment shall be maintained in accordance with the manufacturer's recommended maintenance requirements, and preventative maintenance and repair to all HVAC related systems shall be performed by the manufacturer's certified personnel. The building and grounds of the Premises shall be maintained free of litter and trash and shall comply with all codes, local, state and federal, concerning health and safety. All parking lots shall be kept clean, and all fire lanes, handicapped access and parking spaces shall be regularly striped. Landscaping will be maintained in good and live condition with seasonal color throughout the term of this Lease being installed consistent with Lessor's seasonal plan for the Campus.

Section 7.03. RENOVATION OF IMPROVEMENTS. Lessee shall have the right at any time and from time to time to do such major or minor alterations, renovation or repair work to any portion of the Facilities as Lessee determines is reasonably necessary in order to comply with the requirements of this Lease or the Management Agreement, subject to the prior approval of Lessor for major alterations, which shall not be unreasonably withheld.

Lessee shall consult with the Lessor prior to any major alterations or renovations and Lessee agrees all alterations and renovations to the Facilities shall be done in a manner that preserves the unity and cohesiveness of the Campus. Additionally, any major alterations or renovations to the Facilities must conform to any written policies of Lessor relating to architectural style, landscaping and exterior appearance that are generally applicable to Lessor's other buildings on the Campus.

Section 7.04. DAMAGE TO IMPROVEMENTS. Subject to the other terms of this Lease, in the event any portion of the Facilities is damaged by fire or otherwise, regardless of the extent of such damage or destruction, as soon as practicable thereafter, but in no event longer than ninety (90) days following the date of such damage or destruction, Lessee shall commence the work of repair, reconstruction or replacement of the damage or destruction, Lessee shall commence the work of repair, reconstruction or replacement of the damaged or destroyed building or improvement and prosecute the same with reasonable diligence to completion, so that the Facilities shall be restored to substantially the same size, function and value as the Facilities existing prior to the damage. All or any portion of the insurance proceeds payable as a consequence of a casualty affecting the Facilities shall be deposited with and disbursed by the Permitted Mortgagee in accordance with such Permitted Mortgagee's loan documents or contractual agreements with Lessee pending the completion of repairs to the Facilities; or with Lessor in the event there is no Permitted Mortgagee. If any available insurance proceeds (after payment of all or any portion of such insurance proceeds towards amounts owed under any Permitted Mortgage) are insufficient, in the reasonable judgment of Lessee, to permit restoration in accordance with the terms of this Lease, or if payment of the insurance proceeds is contested or not settled promptly for any reason, then Lessor shall grant an appropriate extension of the time for commencing repairs to allow Lessee to obtain reasonable replacement financing or to obtain the insurance proceeds. If Lessee shall in good faith be unable to (a) obtain reasonable replacement financing to restore the Facilities to substantially the same size, function and value as the Facilities exist prior to the damage or (b) obtain the insurance proceeds from the Permitted Mortgagee, then Lessee (with the Permitted Mortgagees' prior written approval, if applicable) may terminate this Lease by written notice to Lessor. In the event of termination under this Section 7.04, this Lease shall terminate ten (10) days after the date of such notice with the same force and effect as if such date were the date herein fixed for the expiration of the Term. Rent shall be apportioned and paid to the time of such termination, and at the request of Lessor, Lessee shall demolish the remaining Facilities, at Lessee's sole cost and expense and shall restore the Land to substantially the same condition as it existed on the date of this Lease.

ARTICLE EIGHT **CERTAIN LIENS PROHIBITED**

Section 8.01. NO MECHANICS' LIENS. Except as permitted in Section 8.02 hereof, Lessee shall not suffer or permit any mechanics' liens or other liens to be enforced against Lessor's Interest, against Lessee's leasehold interest in the Premises, nor against Lessee's interest in the Facilities and the Facility Equipment by reason of a failure to pay for any work, labor, services or materials supplied or claimed to have been supplied to Lessee or to anyone

holding the Premises or any part thereof through or under Lessee. Lessee shall at all times during construction or reconstruction cause payment and performance bonds to be in place covering all work and/or materials provided therefore.

Section 8.02. RELEASE OF RECORDED LIENS. If any such mechanics' liens or material men's liens shall be recorded against the Premises, Lessee shall cause the same to be released of record or, in the alternative, if Lessee in good faith desires to contest the same, Lessee shall be privileged to do so, but in such case Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and released prior to the execution of such judgment. In the event Lessor reasonably should consider Lessor's Interest endangered by any such liens and should so notify Lessee and each Permitted Mortgagee and Lessee or any Permitted Mortgagee should fail to provide adequate security for the payment of such liens in the form of a surety bond, cash deposit or cash equivalent or indemnity agreement satisfactory to Lessor within thirty (30) days after such notice, then Lessor, at Lessor's sole discretion, may discharge such liens and recover from Lessee immediately as not rent under this Lease the amounts to be paid, with interest thereon from the date paid by Lessor until repaid by Lessee at the rate of ten percent (10%) per annum.

Section 8.03. MEMORANDUM OF RECITALS. The memorandum of lease to be filed pursuant to Section 20.05 of this Lease shall state that any third party entering into a contract with Lessee for improvements to be located on the Land, or any other party claiming under said third party, shall be on notice that Lessor is a governmental entity, that all construction related to this Lease shall be subject to a payment and performance bond and the Land shall not be subject of the filing of mechanics' liens.

ARTICLE NINE OPERATION AND MANAGEMENT OF FACILITIES

Section 9.01. MANAGEMENT AGREEMENTS. Lessee shall be responsible for the operation of the Premises. Lessee shall enter into a Management Agreement in substantially the form that shall be reviewed and approved by Lessor, with a manager approved by Lessor prior to the effective date of such agreement. The Manager is hereby approved as the initial Manager of the Premises. The Management Agreement shall provide for the operation of the Premises without costs or expense to Lessor in conformity with all applicable law, Applicable Regulations and with Lessor's student code of conduct, and/or housing policies (it being recognized that Lessor may adopt such policies even if Lessor does not own or operate any housing facilities and that such policies are solely applicable to the Premises) and such rules, regulations and policies of Lessor as may be promulgated from time to time applicable to all housing projects on the Campus. In addition, subject to law, Lessor shall have access to the premises for police supervision similar to other areas on the Campus and Lessor may also

provide police supervision and security to the Premises as may be agreed between the parties hereto and the Manager.

Section 9.02. BUDGETS AND AUDITS. Lessee shall annually, not later than June 1 of each year, prepare and submit to Lessor and any Permitted Mortgagees a proposed operating budget for the Premises for the following Academic Year, reflecting in reasonable detail the proposed Occupancy Rentals and other sources of income, together with anticipated expenditures consistent with the Lessee's obligation to maintain, repair and manage the Premises in accordance with the terms of this Lease. Within 105 days following the expiration of each Academic Year, Lessee shall cause its books and records with respect to the Premises to be audited by a certified public accountant or a firm of such accountants and shall provide to Lessor and any Permitted Mortgagees a copy of its financial statement as of the end of such Academic Year and its statement of income and expenses for the year then ended, certified by the chief executive officer of the Lessee, and accompanied by a copy of the report thereon of the accountant or firm of accountants performing such audit.

Section 9.03. BOOKS AND RECORDS. Lessee shall keep, or cause to be kept, accurate, full and complete books and accounts showing exclusively its assets and liabilities, operations, transactions and the financial condition of the Facilities. All financial statements shall be accurate in all material respects, shall present fairly the financial position and results of the Facilities' operations and shall be prepared in accordance with generally accepted accounting principles consistently applied. The Lessee and the Manager shall determine methods to be used in the preparation of financial statements, in connection with all items of income and expense including, but not limited to, valuation of assets, the method or methods of depreciation, elections, credits and accounting procedures. The books, accounts and records of the Facilities shall be maintained at the principal office of Lessee. All books and records shall be available for inspection by Lessor and any Permitted Mortgagees at all time during reasonable business hours.

Section 9.04. ADVERTISING. At least seven (7) days prior to printing any advertisements or other promotional material relating to the Facilities, Lessee shall provide Lessor Representative with copies thereof for Lessor's consent, which consent shall be deemed given unless Lessor's representative objects in writing to the same no later than three (3) days prior to printing.

Section 9.05. AUDITS. In addition to the provisions of Section 9.02, Lessor may, at its option and at its own expense and during customary business hours, conduct internal audits of the books, records and accounts of the Facilities. Audits may be made on either a continuous or a periodic basis or both and may be conducted by employees of Lessor or by independent auditors retained by Lessor. All such audits shall be conducted without materially or unreasonably interrupting or interfering with the normal conduct of business affairs by the Lessee. Lessor covenants with Lessee to keep the results of any such audits confidential, except as required by rules and regulations of Lessor and by Applicable Law.

ARTICLE TEN

INSURANCE AND INDEMNIFICATION

Section 10.01. INDEMNIFICATION BY LESSEE. Excluding the acts or omissions of Lessor, its employees or agents, Lessee shall indemnify and save harmless Lessor, its agents, officers and employees, from and against any and all liability claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of any and every kind and nature arising or growing out of or in any way connected with Lessee's use, occupancy, management, operation or control of the Premises. This obligation to indemnify shall include legal counsel whose fees must be reasonable and third-party investigation costs and all other reasonable costs, expenses and liabilities from the first notice that any claim or demand has been made; however, Lessee and Lessor shall use the same counsel if such counsel is approved by Lessor, which approval shall not be unreasonably withheld or delayed. If Lessor does not approve such counsel, then Lessor may retain independent counsel at Lessor's sole costs and expense. It is expressly understood and agreed that Lessee is and shall be deemed to be an independent contractor responsible to all parties for its respective acts or omissions and that Lessor shall in no way be responsible therefore.

Section 10.02. LESSOR NOT LIABLE. Lessor shall not be liable for any damage to either persons or property sustained by Lessee or other persons and caused by any act or omission of any occupant of the Facility other than Lessor or its agents, officers or employees.

Section 10.03. INSURANCE. Throughout the Term, Lessee shall keep the Premises or cause the same to be kept continuously insured against such risks as are customarily insured against with respect of facilities of like size and type, as recommended by the Manager, paying as the same become due all premiums in respect thereto, including but not limited to:

- A.** insurance upon the repair or replacement basis in an amount of not less than 100% of the them actual cost of replacement (excluding costs of replacing excavations and foundations but without deduction for depreciation) of the Premises (with the co-insurance percentage not to exceed 80% and reasonable deductible provisions) against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke and such other risks as are now or hereafter included in the uniform standard extended coverage endorsement in common use for similar structures (including vandalism and malicious mischief);
- B.** comprehensive general liability insurance providing insurance (with reasonable deductible provisions) to the extent of not less than \$1,000,000.00 per occurrence against liability for personal and bodily injury including death resulting therefrom and \$150,000.00 per occurrence for damage to property including loss of use thereof, occurring on or in any way related to the Premises or any part thereof or the operation thereof, with excess coverage or "umbrella" insurance for claims under such coverage in the aggregate of not less than \$1,000,000.00 for any one occurrence;

- C. if and only if automobiles are owned by Lessee, automobile liability insurance providing insurance (with deductible provisions not to exceed \$5,000.00 per occurrence) to the extent of not less than \$300,000.00 per occurrence against liability for personal injury, including death resulting there from, and \$100,000.00 per occurrence for damage to property, with excess coverage or “umbrella” insurance for claims under such coverage in the aggregate of not less than \$1,000,000.00 of any one occurrence;**
- D. if necessary, insurance under the Federal Flood Insurance Program shall be maintained at all times within the minimum requirements and amounts required for federally financed or assisted loans under the Flood Disaster Protection Act of 1973, as amended, if the Premises are eligible under such program;**
- E. workers’ compensation coverage, or other provisions therefore, as required by the laws of the State of New Mexico; and**
- F. business interruption or use and occupancy insurance on the Premises in an amount sufficient to enable Lessee to make, from the proceeds of such insurance, all required Loan Payments, as such term is defined in the Loan Agreement, during the time, up to not less than one year, if Lessee shall experience a substantial loss in Gross Revenues as a result of loss of use caused by the risks covered by the insurance required under this Section.**

Section 10.04. LESSOR ADDITIONAL INSURED. Lessee agrees that with respect to the above required insurance, Lessor shall:

- A. Be named on the Property Insurance Policy and Comprehensive General Liability Policy as additional insured/or an insured, as its interest may appear. Lessor agrees to promptly endorse insurance checks or otherwise release insurance proceeds, provided no Event of Default is continuing hereunder. Lessor shall, regardless of the existence of an Event of Default, promptly endorse insurance checks or otherwise release insurance proceeds payable to (or to be held by) a Permitted Mortgagee if such Permitted Mortgagee’s Permitted Mortgage so requires.**
- B. Be provided with thirty (30) days advance notice, in writing, of cancellation or material change in coverage.**
- C. Be provided with a certificate evidencing the above-required insurance at the time the policies are required to be obtained and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least thirty (30) days prior to the expiration or cancellation of any such policies.**

Section 10.05. ADDITIONAL INSURANCE. Lessor may review Lessee's required insurance coverage's and limits as stated herein at the time of renewal of the said policies or at the time of a material change, and Lessor reserves the right to require reasonable additional limits or coverages. Lessee agrees to comply with any such reasonable request by Lessor.

Section 10.06. BLANKET POLICIES. Lessee may submit any blanket general insurance policy containing the requirements of this Article Ten, to Lessor for its approval, which shall not be unreasonably withheld.

Section 10.07. SUBROGATION. Anything in this Lease to the contrary notwithstanding, Lessor and Lessee each hereby waives any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers and employees for any injury, death, loss or damage that may occur to Persons or the Premises, or any personal property of such party therein, by reason of fire, the elements or any other cause which is insured against under the terms of the policies of insurance that are maintained by Lessor or Lessee or that Lessee is required to provide hereunder, regardless of cause or origin, including negligence by the party hereto, its agents, officers or employees, and each party covenants that no insurer shall hold any right of subrogation against the other, except in the case (and only in the case) that such waiver of subrogation invalidates coverage under such policy.

ARTICLE ELEVEN
TERMINATION, DEFAULT AND REMEDIES

Section 11.01. EVENTS OF DEFAULT. Any one of the following events shall be deemed to be an "Event of Default" by Lessee under this Lease.

- A.** Lessee shall fail to pay any sum required to be paid to Lessor under the terms and provisions of this Lease and such failure shall not be cured within sixty (60) days after Lessee's receipt of written notice from Lessor of such failure.
- B.** The taking by execution of Lessee's leasehold estate, Lessee's interest in the Facilities and the Facility Equipment or any interest thereon for the benefit of any Person other than a Permitted Mortgagee or purchaser at a Foreclosure.
- C.** Lessee shall fail to perform any other covenant or agreement, other than the payment of money, to be performed by Lessee under the terms and provisions of this Lease and such failure shall not be cured within one hundred eighty (180) days after receipt of written notice from Lessor of such failure; provided that if, during such one hundred eighty (180) day period, Lessee takes action to cure such failure but is unable, by reason of the nature of the work involved, to cure such failure within such period and continues such work thereafter diligently and without unnecessary delays, such failure shall not constitute an Event of Default hereunder.

- D.** A court having jurisdiction shall enter an order for relief in any involuntary case commenced against Lessee, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or the entry of a decree or order by a court having jurisdiction over the Premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of or for Lessee or any substantial part of the properties of Lessee or ordering the winding up or liquidation of the affairs of Lessee, and the continuance of any such decree or order unstayed and in effect for a period of one hundred eighty (180) consecutive days.
- E.** The commencement by Lessee of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or the consent or acquiescence by Lessee to the commencement of a case under such Code, or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of or for Lessee or any substantial part of the properties of the Lessee.

Section 11.02. RIGHT TO EXPEL. A Permitted Mortgagee shall have the right to expel Lessee upon the occurrence and during the continuance of an Event of Default pursuant to the terms of the relevant Permitted Mortgage and assume the position of Lessee with all rights and duties under this Lease.

Section 11.03. LESSOR'S RIGHTS UPON DEFAULT. Subject to the rights of the Permitted Mortgagees under Article Six and Section 11.02, upon the occurrence and during the continuance of an Event of Default, Lessor may at its option declare this Lease and all rights and interests created by it to be terminated, may seek any and all damages occasioned by the Event of Default or may seek any other remedies available at law or in equity.

Section 11.04. RIGHT TO RELET PREMISES. Upon Lessor's exercise of the election to terminate this Lease, Lessor shall take possession of the Premises and shall use reasonable efforts to relet the same for the remainder of the Term for the account of Lessee upon such terms, as Lessor is able to obtain. Any termination of this Lease shall not relieve Lessee from the payment of sums then due and payable to Lessor or any claim for accrued damages against Lessee. Any such termination shall not prevent Lessor from enforcing the payment of any sums or from claiming damages by and remedy provided for by law or from recovering damages from Lessee for any Event of Default.

Section 11.05. LIMITED RECOURSE OBLIGATION OF LESSEE. Notwithstanding any other provision of this Lease, the obligations of Lessee hereunder are limited recourse obligations, to be satisfied solely out of the Lessee's rights in the Premises and the income derived there from. In no event shall any obligations of the Lessee hereunder constitute general recourse obligations of the Lessee, and in the event that the Lessee is unable to fulfill any of its obligations hereunder, the Lessor shall only be entitled to seek recovery from the Lessee's rights in the Premises. In the event of any deficiency in that regard, the Lessee shall have no liability for such deficiency.

In no event shall any member, manager, officer, agent, or director of the Lessee have personal liability in any form whatsoever for the obligations of the Lessee hereunder.

The Lessee anticipates entering the Management Agreement regarding the Premises. Certain of the obligations of the Lessee hereunder may be performed by the Manager pursuant to the terms of the Management Agreement. Lessor shall accept such performance by the Manager as performance by Lessee.

ARTICLE TWELVE
FACILITIES, LESSEE'S RIGHT OF FIRST REFUSAL, FACILITIES NOT
TO BE FIXTURES AND ADDITIONAL LESSOR HOUSING

Section 12.01. TITLE TO FACILITIES. Title to the Facilities and the Facility Equipment, shall be in Lessee. Title to all consumable supplies and materials used in constructing, altering, renovating or remodeling the Facilities shall be in Lessee when delivered to the Land. At the termination of this Lease, title to the Facilities and the Facility Equipment shall automatically vest in Lessor, without any required action on the part of Lessee or Lessor. Lessee agrees to cooperate with Lessor in the preparation, execution, delivery and filing of such deeds, releases, agreements or other documents deemed necessary by Lessor to reflect the transfer of title of the Facilities and the Facility Equipment as well as the termination of this Lease at such time.

Section 12.02. FACILITIES NOT TO BE FIXTURES. Until such time that this Lease is terminated, Lessor and Lessee intend that fee title to the Land, held by Lessor, shall be separated from fee title to the Facilities and the Facility Equipment, held by Lessee. Lessor hereby waives, until the termination of this Lease, the application of New Mexico real property law, the law of fixtures or any other law the effect of which would be to vest the title to the Facilities and the Facility Equipment in Lessor.

ARTICLE THIRTEEN
OCCUPANCY AGREEMENT

Section 13.01. SEMESTER DEFINED. As referenced herein, (a) "**Fall Semester**" shall mean the fall academic term of the Campus of the New Mexico Junior College commencing during the month of August and ending during the month of December, (b) "**Spring Semester**" shall mean the spring academic term of the Campus of the New Mexico Junior College commencing during the month of January and ending during the month of May, and (c) "**Summer Session**" shall mean the summer academic term of the Campus of the New Mexico Junior College commencing during the month of June and ending during the month of August. The Fall Semester, Spring Semester and Summer Session are collectively referred to herein as "Semesters" and individually referred to herein as a "**Semester**."

Section 13.02. OCCUPANCY RENTALS; HOUSING CONTRACTS.

A. Lessee shall charge Occupancy Rentals to Leasing Tenants of the Facilities at the rates jointly determined by Lessee and the Manager. The Occupancy Rentals shall be established as shall be necessary to assure maximum occupancy and use of the Facilities and the services related thereto, as shall be necessary to satisfy the applicable covenants contained in any Permitted Mortgage and as shall be necessary to generate sufficient revenues for the payment of Annual Expenses, for the payment of the debt service on the Permitted Mortgages, for the payments required under the Sublease, for the payment of the Reserve Amounts and to make all other payments and charges as are required under the Permitted Mortgages. If the Permitted Mortgagee does not believe, using sound business judgment, that existing rental rates will be sufficient to satisfy the objectives described in this Section 13.02.A, such Permitted Mortgagee may provide Lessee and Lessor with at least thirty (30) days advance written instruction regarding the rental rates to be charged in leases executed after such instruction is to be effective, and Lessee and Lessor agree to implement the rental rates pursuant to such instruction.

B. Lessee shall establish a Joint Advisory Property Committee (the "Committee") that will make recommendations to Lessee relating to the operation and management of the Facilities. The Committee shall include at all times and as its initial membership (but not be limited to) (a) at least two of the following officers of the New Mexico Junior College as appropriate: (i) the Vice President for Finance, (ii) the Vice President for Student Services, (iii) the Director of Student Housing or Residence Life of the College (or the equivalent of these positions as their titles may change, or other staff members with similar responsibilities as appropriate), and/or a representative of New Mexico Junior College Lessee's Administrator; (b) a representative of the Manager; and (c) a representative of Lessee who shall serve as a permanent member. The Committee shall serve Lessee in an advisory capacity satisfactory to the Permitted Mortgagee relating to the management of the Facilities and provide recommendations to Lessee regarding the ownership, operation and management of the Facilities. In the event that one of the initial Committee members is to be replaced for any reason, Lessee shall use its best efforts to replace the departing Committee member with another member having sufficient expertise and experience in college related or student housing affairs Membership on the Committee will be limited to six persons at any one time. The Committee shall meet not less than semi-annually during the Term of this Lease.

C. Lessee shall use a form of housing contract (the "Housing Contract") for execution by all Eligible Tenants leasing space in the Facilities (the "Leasing Tenants"). The initial final form of the Housing Contract must be approved by the Lessor Representative. Lessee shall be entitled to amend the form of Housing Contract from time to time, in which event Lessee shall deliver the amended form to Lessor for its consent, which shall not be unreasonably withheld. Lessee shall arrange for each Leasing Tenant to execute and deliver to Lessee the form of Housing Contract prepared by Lessee.

D. To the extent permitted by applicable law, Lessor agrees that it will abide by any contractual provision in the Housing Contract whereby a Leasing Tenant has agreed that Lessee or the Manager may request Lessor to withhold the academic transcripts of such

Leasing Tenant for non-payment of rent or other default of the Leasing Tenant under such Housing Contract.

E. Except as provided in Section 13.02D, Lessor will have no obligation to Lessee if any Leasing Tenant fails to pay the Occupancy Rentals in accordance with the terms of its Housing Contract.

Section 13.03. LESSOR PROMOTIONS.

A. Lessor shall actively promote and market the Facilities as an integral part of the overall housing program of the Campus of the New Mexico Junior College. In the regard, Lessor shall:

- 1. Include a housing brochure (prepared by Lessee) in all response mailings to prospective students seeking information about enrolling in the New Mexico Junior College.**
- 2. Include a housing brochure (prepared by Lessee) in all mailings to student applicants, which notify them of their admittance to the New Mexico Junior College.**
- 3. Provide Lessee with a convenient space at no cost on the main floor of the Student Union of the Campus for a project information booth.**
- 4. Provide Lessee upon request with a list of those students who have indicated an interest in living on campus, to the extent it is reasonably available or accessible to Lessor, which includes to the extent available their first and last name, classification, mailing address and telephone number.**
- 5. Provide at Lessor's expense ½ page project information advertisements in the Campus newspaper, if one is published, during the months of April, May and July and on a bi-monthly basis during all other months.**
- 6. Allow Lessee to use a reasonable number of signs, flags and banners on the Campus to market the Facilities.**
- 7. Incorporate information about the Facilities in each issue of the New Mexico Junior College academic catalogue and other appropriate university publications.**
- 8. Jointly with Lessee organize an "Open House" at the Facilities at the beginning of each Semester and invite all deans and faculty of the Campus of the New Mexico Junior College.**
- 9. Permit the management staff for the Facilities to participate in all residence staff training programs and other similar programs, if any, made available to**

the staff of other housing facilities at the Campus of the New Mexico Junior College provided, that there shall be no obligation to have any such programs.

B. Lessee shall cooperate in promoting and marketing the Facilities by causing the following actions to be taken, all at Lessee's cost:

- 1. Prepare a housing brochure, which reflects the floor plans, amenities and benefits of the Facilities.**
- 2. Maintain an on site leasing office at the Premises.**
- 3. Prepare four 20" by 30" color, mounted rendering of the Facilities for use by Lessor in its promotion and marketing of the Facilities.**

Section 13.04. CAMPUS OCCUPANCY REPORTS. At least thirty (30) days after the commencement of each Semester during the Term, Lessee shall deliver to Lessor the Housing Occupancy Report for such Semester which shall include the name, social security number and apartment address of each Leasing Tenant and shall be certified by Lessee, or its representative, as being true and correct.

Section 13.05. DEDICATION OF THE PROJECT TO ON-CAMPUS OCCUPANTS. Lessee agrees to offer units in the Facilities for lease only to Eligible Tenants, and Lessee shall cooperate with Lessor in marketing the Facilities to prospective Eligible Tenants. Only with the prior written consent of Lessor may Lessee offer units in the Facilities for lease to students, faculty and staff attending any other institution of higher education.

Section 13.06. ADDITIONAL LESSOR HOUSING. Recognizing the benefit of the Facilities received by Lessor, Lessor hereby agrees, to the extent permitted by law, that it will construct or cause to be constructed additional Lessor owned or controlled housing facilities serving Lessor's campus (whether on-campus or off-campus) only upon (a) the prior written consent of the Municipal Bond Insurer or (b)(i) delivery to the Municipal Bond Insurer and the Trustee of a certificate of Lessee certifying the occupancy rate for the Facilities has been at least ninety-five percent (95%) and net revenues of the Facilities have been at least 1.30 times the average annual debt service requirements of the Bonds and additional bonds (or debt secured by the revenues of the Facilities), if any, in each of the last three fiscal years of Lessee, and (ii) delivery to the Municipal Bond Insurer and the Trustee of a certificate of Lessee certifying that, on a pro forma basis, net revenues for the Facilities shall continue to meet the required financial covenants relating to the Bonds following the acquisition and construction of such proposed additional housing facilities by Lessor.

ARTICLE FOURTEEN **DEFAULT BY LESSOR**

Section 14.01. LESSOR DEFAULTS. If Lessor fails to perform any of its respective obligations or covenants under this Lease, then Lessee shall, in addition to any other remedy

provided for herein, be entitled to enforce any one or more of the following rights and remedies:

- A. Lessee shall be entitled to cease paying all Rent and other amounts owed to Lessor under this Lease; and
- B. Lessee shall be entitled to require Lessor to specifically perform its obligations under this Lease or restrain or enjoin Lessor from continuing the activities that constitute the default of Lessor.

Section 14.02. GOVERNMENT AGENCY FUNDING. Lessor shall not be bound to perform any obligation under this agreement if during any fiscal year during the term of this agreement there are insufficient funds appropriated for any obligation of Lessor under this agreement. To affect this clause, Lessor shall give Lessee thirty days notice prior to the beginning of the fiscal year that funds were not appropriated to fulfill the Lessor's obligations herein.

ARTICLE FIFTEEN CONDEMNATION

Section 15.01. CONDEMNATION OF ENTIRE PREMISES. Upon the permanent Taking of the entire Premises, this Lease shall terminate and expire as of the date of such Taking, and both Lessee and Lessor shall thereupon be released from any liability thereafter accruing hereunder. Lessee and the Permitted Mortgagee shall each receive notice of any proceedings relating to a Taking and shall each have the right to participate therein.

Section 15.02. PARTIAL CONDEMNATION. Upon a temporary Taking or a Taking of less than all of the Premises, Lessee, at its election, may terminate this Lease by giving Lessor notice of its election to terminate at least sixty (60) days prior to the date of such termination if Lessee reasonably determines that the Premises cannot be economically and feasibly used by Lessee for its intended purposes. Upon any such termination, the Rent accrued and unpaid hereunder shall be apportioned to the date of termination.

Section 15.03. PAYMENT OF AWARDS. Upon the Taking of all or any portion of the Premises (a) Lessee shall be entitled (free of any claim by Lessor) to the Award for the value of its interest in the Premises and its rights under this Lease and damages to any of its other property, together with any other compensation or benefits paid as a consequence of the interruption of Lessee's business; and (b) Lessor shall be entitled (free of any claim by Lessee) to the Award for the value of Lessor's Interest (such value to be determined as if this Lease were in effect and continuing to encumber Lessor's Interest). Any Award shall be paid jointly to Lessor, Lessee and any Permitted Mortgagees.

Section 15.04. REPAIR AFTER CONDEMNATION. Should a Taking occur that does not result in termination as provided by Sections 15.01 or 15.02, Lessee, at its expense, shall commence and proceed with reasonable diligence to repair or reconstruct the Facilities to a

complete architectural unit or units. Any and all such repairs or reconstruction shall be subject to prior reasonable approval of Lessor and the prior reasonable approval of any Permitted Mortgagee. If such repairs or reconstruction are not undertaken, any Award payable as a consequence of a Taking shall be required to be paid towards amounts owed under any Permitted Mortgage. Notwithstanding the foregoing provisions of this Section 15.04, if the Award payable as a consequence of a Taking (after payment of all or any portion of such Award towards amounts owed under any Permitted Mortgage) is insufficient, in the reasonable judgment of Lessee, to permit such restoration, then Lessee, with the prior written approval of the Permitted Mortgagee (a copy of which approval must be delivered to Lessor), may terminate this Lease by written notice to Lessor in which event, at the request of Lessor, Lessee shall demolish the Facilities, at Lessee's sole cost and expense, and shall restore the Land to substantially the same condition as it existed on the date of this Lease. All or any portion of the Award payable to Lessee as a consequence of a Taking affecting the Premises shall be deposited with and disbursed by the Permitted Mortgagee pending the completion of the restoration of the Premises. In the event of termination under this Section 15.04, this Lease shall terminate ten (10) days after the date of such notice with the same force and effect as if such date were the date herein fixed for the expiration of the Term, and the Rent shall be apportioned and paid at the time of such termination.

ARTICLE SIXTEEN
ASSIGNMENT, SUBLETTING AND TRANSFERS OF LESSEE'S OR
LESSOR'S INTEREST

Section 16.01. **ASSIGNMENT BY LESSEE.** Lessee may sell or assign Lessee's leasehold estate created by this Lease and the other rights of Lessee hereunder to any Permitted Assignee without the consent of Lessor, subject to the condition of any loan agreement to which Lessee is a party and so long as such assignee unconditionally assumes Lessee's obligations hereunder, and Lessor shall release Lessee from its obligations under this Lease following the date of the assignment, provided, however, that any such Permitted Assignee shall be subject to all provisions of this Lease. In addition, Lessee may assign its rights (but not its obligations) under this Lease to Lea County, New Mexico in connection with the issuance of the Bonds, which assignment is permitted notwithstanding any provision of this Lease to the contrary.

Section 16.02. **SUBLETTING.** Except for subleases to occupants of the Facilities and except as otherwise set forth in this Lease, Lessee is not authorized to sublet the leasehold estate without the Lessor's prior written consent, which consent may be withheld in Lessor's sole discretion. A sublease to any Person providing laundry services to the Facilities shall be deemed approved by Lessor. Upon the assignment to Lea County, New Mexico contemplated by the final sentence of Section 16.01, Lessee shall enter into the Sublease, which is permitted notwithstanding any provision of this Lease to the contrary.

Section 16.03. **TRANSFERS OR MORTGAGES OF LESSOR'S INTEREST.** Any and all mortgages or liens placed or suffered by Lessor encumbering Lessor's Interest shall be expressly subject and subordinate this Lease, to all obligations of Lessor hereunder, and to all

of the rights, titles, interests and estates of Lessee created or arising hereunder. The obligations and rights of Lessee under this Lease shall survive any conveyance, foreclosure or other transfer of Lessor's interest, and Lessee shall not be relieved of such obligations and rights as a consequence of such conveyance, foreclosure or other transfer. Furthermore, any Person succeeding to Lessor's Interest as a consequence of any such conveyance, foreclosure or other transfer shall succeed to all of the obligations of Lessor hereunder.

ARTICLE SEVENTEEN **COMPLIANCE CERTIFICATES**

Section 17.01. LESSOR COMPLIANCE. Lessee agrees, at any time and from time to time upon not less than thirty (30) days prior written notice by Lessor, to execute, acknowledge and deliver to Lessor or to such other party as Lessor shall request, a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) to the best of its knowledge, whether or not there are then existing any offsets or defenses against the enforcement of any of the terms, covenants or conditions hereof upon the part of Lessee to be performed (and if so specifying the same), (c) the dates to which the Rent and other charges have been paid, and (d) the dates of commencement and expiration of the Term, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the Lessor's Interest.

Section 17.02. LESSEE COMPLIANCE. Lessor agrees, at any time and from time to time, upon not less than thirty (30) days prior written notice by Lessee, to execute, acknowledge and deliver to Lessee a statement in writing, addressed to Lessee or to such other party as Lessee shall request, certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) whether an Event of Default has occurred and is continuing hereunder (and stating the nature of any such Event of Default); (d) whether an event has occurred which, after giving of notice or the passage of time (or both) would result in an Event of Default (and stating the nature of any such event); and (e) the dates of commencement and expiration of the Term. Any such statement delivered pursuant to this Section may be relied upon by any prospective assignee, sublessee or Permitted Mortgagee of this Lease or by any assignee or prospective assignee of any Permitted Mortgage.

ARTICLE EIGHTEEN **TAXED AND LICENSES**

Section 18.01. PAYMENT OF TAXES. Lessee shall pay, as a portion of Annual Expenses, and, upon request by Lessor, shall provide evidence of payment to the appropriate collecting authorities, all federal, state and local taxes and fees, which are now or may hereafter be levied upon Lessee, the Premises, the business conducted on the Premises and any of Lessee's property used in connection therewith. Lessee shall maintain in current status all federal, state and local licenses and permits required for the operation of the business

conducted by Lessee. Lessee may pay any of the above items in installments if payments may be so made without penalty other than the payment of interest. The obligations of Lessee to pay taxes and fees under this Section 18.01 shall apply only to the extent that Lessee is not exempt from paying such taxes and fees and to the extent that such taxes and fees are not otherwise abated.

Section 18.02. CONTESTED TAX PAYMENTS. Lessee shall not be required to pay, discharge or remove any taxes or assessments imposed on Lessee so long as Lessee is contesting the amount or validity thereof by appropriate proceeding which shall operate to prevent or stay the collection of the amount so contested. Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on any lien arising in respect to such contested amounts which are Lessee's responsibility, cause the same to be discharged and removed prior to the execution of such judgment. Lessor shall cooperate with Lessee in competing such contest and Lessor shall have no right to pay the amount contested during the contest. Upon the termination of such proceeding, Lessee shall deliver to Lessor proof of the amount due as finally determined and proof of payment thereof. Lessor, at Lessee's expense, shall join in any such proceeding if any law shall so require.

ARTICLE NINETEEN **FORCE MAJEURE**

Section 19.01. DISCONTINUANCE DURING FORCE MAJEURE. Whenever a period of time is herein prescribed for action to be taken by Lessee or a Permitted Mortgagee, there shall be excluded from the computation for any such period of time, any delays due to Force Majeure. Lessor shall not be obligated to recognize any delay caused by Force Majeure unless Lessee or such Permitted Mortgagee shall, within ten (10) days after Lessee or such Permitted Mortgagee is aware of the existence of an event of Force Majeure, notify Lessor thereof. The foregoing notwithstanding, if any such delay is caused by Lessor, Lessee or such Permitted Mortgagee shall not be required to give notice to Lessor of such delay.

ARTICLE TWENTY **MISCELLANEOUS**

Section 20.01. NONDISCRIMINATION, EMPLOYMENT AND WAGES. Any discrimination by Lessee or its agents or employees on account of race, color, sex, age, religion, national origin or handicap, in employment practices or in the performance of the terms, conditions, covenants and obligations of this Lease, is prohibited.

Section 20.02. CONFLICT OF INTEREST. Lessee certifies (and this Lease is made in reliance thereon) that neither Lessee nor any person having an interest in this Lease by, through or under Lessee is an officer of Lessor.

Section 20.03. NOTICES. Notices or communications to Lessor or Lessee required or appropriate under this Lease shall be in writing, sent by (a) personal delivery, or (b) expedited

delivery service with proof of delivery, or (c) registered or certified United States mail, postage prepaid, or (d) prepaid telecopy if confirmed by expedited delivery service or by mail in the manner previously described, addresses as follows:

if to Lessor:

Regina Organ
New Mexico Junior College
5317 Lovington Highway
Hobbs, New Mexico 88242
ATTENTION: Vice President-Student Services
Telecopy No.:

with copy to:

Lance Caviness
New Mexico Junior College
Hobbs, New Mexico 88242
5317 Lovington Highway
ATTENTION: Director of Student Life
Telecopy No.:

if to Lessee:

ATTENTION: Manager
Telecopy No.:

with a copy to:

ATTENTION:
Telecopy No.:

or to such other address or to the attention of such other person as hereafter shall be designated in writing by such party. Copies of all notices under this Lease shall be sent to any Permitted Mortgagee. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service, telecopy or mail, upon receipt. The notices provided to Lessee under this Lease shall not be effective against any Permitted Mortgagee, unless such notices are sent to the Permitted Mortgagee pursuant to Section 6.02.

Section 20.04. RELATIONSHIP OF PARTIES. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of Lessor and Lessee.

Section 20.05. MEMORANDUM OF LEASE. Neither Lessor nor Lessee shall file this Lease for record in the Office of the County Clerk of Lea County, State of New Mexico or in any public place without the written consent of the other. In lieu thereof, Lessor and Lessee agree to execute in recordable form a memorandum of this Lease. Such memorandum shall be filed for record in the Office of the County Clerk of Lea County.

Section 20.06. ATTORNEYS' FEES. If either party is required to commence legal proceedings relating to this Lease, the prevailing party shall be entitled to receive reimbursement for its reasonable attorneys' fees and costs of suit.

Section 20.07. APPROVALS. Except as otherwise provided herein, whenever approvals are required of either party hereunder, if no objection is made to a written proposal or request for approval within the time period specified for response herein, such approval shall be deemed to have been given. If no time period is specified for a response to a proposal or request for approval, a reasonable time not to exceed ten (10) days from the date of such proposal or request shall apply unless the parties otherwise agree in writing.

Section 20.08. NEW MEXICO LAW TO APPLY. This Lease shall be construed under and in accordance with the laws of the State of New Mexico, and all obligations of the parties created hereunder are to be performed in Lea County, New Mexico.

Section 20.09. APPROVAL OF ANCILLARY AGREEMENT. Lessor agrees that in the event it becomes necessary or desirable for Lessor to approve in writing any ancillary agreements or documents concerning the Premises or concerning the construction, operation or maintenance of the Facilities or to alter or amend any such ancillary agreements between Lessor and Lessee or to give any approval or consent of Lessor required under the terms of this Lease, Lessor hereby authorizes, designates and empowers Lessor Representative to execute any such agreement, approvals or consents necessary or desirable.

Section 20.10. RIGHTS CUMULATIVE. All rights, options, and remedies of Lessor and Lessee contained in this Lease shall be construed and held to be cumulative and no one of them shall be exclusive of the other. Lessor and Lessee shall each have the right to pursue any one or all of such remedies or any other remedy or relief, which may be provided by law or in equity whether or not stated in this Lease.

Section 20.11. NON-WAIVER. No waiver by Lessor or Lessee of a breach of any of the covenants, conditions or restrictions of this Lease shall constitute a waiver of any subsequent breach of any of the covenants, conditions or restrictions of this Lease. The failure of Lessor

or Lessee to insist in any one or more cases upon the strict performance of any of the covenants of the Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by Lessor or acceptance of payment by Lessor of Rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach. No waiver, change, modification or discharge by Lessor or Lessee of any provision of this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

Section 20.12. TERMINOLOGY. Unless the context of this Lease clearly requires otherwise, (a) pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character; (b) the singular shall include the plural wherever and as often as may be appropriate; (c) the word "includes" or "including" shall mean "including without limitation"; (d) the word "or" shall have the inclusive meaning represented by the phrase "and/or"; (e) the words "hereof", "herein" "hereunder," and similar terms in this Lease shall refer to this Lease as a whole and not to any particular section or article in which such words appear. The section, article and other headings in this Lease and the Table of Contents to this Lease are for reference purposes and shall not control or affect the construction of this Lease or the interpretation hereof in any respect. Article, section and subsection and exhibit references are to this Lease unless otherwise specified. All exhibits attached to this Lease constitute a part of this Lease and are incorporated herein. All references to a specific time of day in this Lease shall be based upon Mountain Time (or the other standard of measuring time recognized in Lea County, New Mexico).

Section 20.13. COUNTERPARTS. This agreement may be executed in multiple counterparts, each of which shall be declared an original.

Section 20.14. SEVERABILITY. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, then and in the event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

Section 20.15. ENTIRE AGREEMENT. This Lease, together with the exhibits attached hereto, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and no other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition or representations not herein written.

Section 20.16. AMENDMENT. No amendment, modification or alteration of this Lease shall be binding unless the same be in writing, dated on or subsequent to the date hereof and duly executed by the parties hereto. No such amendment, modification or alteration, and no termination of this Lease, shall be effective without the prior written consent of each Permitted Mortgagee.

Section 20.17. SUCCESSORS AND ASSIGNS. All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors and assigns including any successor by merger or consolidation of Lessor into another educational institution.

Section 20.18. HAZARDOUS MATERIALS. Notwithstanding anything contained in this Lease to the contrary, but subject to the prior written approval of the Permitted Mortgagees, if Lessee finds any Hazardous Materials (hereinafter defined) on the Land within thirty (30) days following the execution hereof, then Lessee shall have the right to terminate this Lease by delivering written notice thereof to Lessor no later than forty-five (45) days following the execution hereof. If Lessee terminates this Lease as a result of finding Hazardous Materials on the Land, then neither party hereto shall have a further right, duties or obligations hereunder. As used in this Lease, "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6091 et seq.), as amended from time to time, and regulations promulgated there under; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 6091 et seq.), as amended from time to time, and regulations promulgated there under; (c) polychlorinated biphenyls; (d) underground storage tanks, whether empty, filled or partially filled with any substance; (e) any substance the presence of which on the Land is prohibited by any governmental requirements; and (f) any other substance which by any governmental requirements requires special handling or notifications of any federal, state or local governmental entity in its collection, storage, treatment or disposal.

Section 20.19. INSURED BONDS. Lessee may cause the Lea County, New Mexico to issue the Bonds secured by a Permitted Mortgage to provide the construction financing and permanent financing for the Facilities and cause the Bonds to be insured by the Municipal Bond Insurer which would issue a policy irrevocably guaranteeing to the holders of the Bonds the full and complete payment of the bonds pursuant to the terms of the policy. In such event, notwithstanding any provisions of this Lease to the contrary, the following provisions shall apply:

- A. The Municipal Bond Insurer and the Trustee shall be third party beneficiaries of this Lease entitled to enforce the terms hereof.**
- B. Lessor shall provide written notice to the Municipal Bond Insurer if this Lease is terminated as a result of a Taking pursuant to Article Fifteen hereof.**

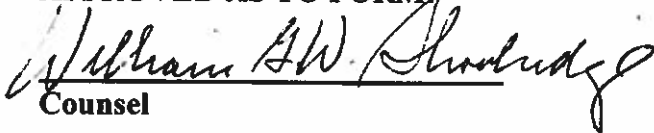
Section 20.20. CONTINUING DISCLOSURE. Lessor agrees to provide Lessee with any information concerning the operations of Lessor required for Lessee to comply with its annual continuing disclosure requirements pursuant to a continuing disclosure agreement entered into with respect to the Bonds or any other bonds issued to finance the acquisition and construction of any Facilities on the Premises.

Section 20.21. PRIVACY OF INFORMATION. Unless otherwise provided herein, any information provided by Lessor pursuant to this Lease shall not be disseminated to third parties without Lessor's prior written consent except for dissemination or disclosure by Lessee (I) to any of its affiliates or any of its or its affiliates' directors, managers, officers, employees, advisors, representatives, attorneys, accountants, and auditors whom it determines need to know such information in connection with the construction and/or operation or the Premises or (ii) in response to any request or requirement by interrogatory, court order, subpoena, administrative proceeding, civil investigatory demand, or any similar legal process.

EXECUTED as of the 16th day of October, 2003.

"Lessor"

APPROVED AS TO FORM:


Counsel


By:


President

By:


Chairman

"Lessee"

By: 
Name: Thurman F. Duncan
Title:

STATE OF New Mexico §

COUNTY OF Lea §

This instrument was acknowledged before me on 16th day of October, 2003 by Steve McCleery, President of the New Mexico Junior College on its behalf.

NOTARY PUBLIC, STATE OF NEW MEXICO
My commission expires: October 30, 2005

STATE OF New Mexico §

COUNTY OF Lea §

This instrument was acknowledged before me on 16th day of October, 2003 by Larry Hanna, Chairman of the Board of New Mexico Junior College on its behalf.

NOTARY PUBLIC, STATE OF NEW MEXICO

My commission expires: October 30, 2005

STATE OF New Mexico §

COUNTY OF Lea §

This instrument was acknowledged before me on 16th day of October, 2003 by Thurman Duncan, of the Lea County Student Housing L.L.C., a New Mexico limited liability company, on behalf of said company.

NOTARY PUBLIC, STATE OF NEW MEXICO

My commission expires: October 30, 2005



NEW MEXICO JUNIOR COLLEGE

Office of the President

Memo

DATE: October 6, 2003
TO: New Mexico Junior College Board Members
FROM: Steve McCleery *Sm*
SUBJECT: Amended New Mexico Junior College Resolution Creating Policy on Labor Management Relations

Attached, you will find an amended copy of the New Mexico Junior College Resolution that creates a Policy on Labor Management Relations. The amended change can be found on page 9, Section 12, and paragraph A. The amended change reads as follows: "An election shall only be valid if forty (40%) of the eligible employees in the bargaining unit vote in the election." It is my recommendation that you approve the amended change to the Resolution.

Thank you for your consideration.

10817

**AMENDED NEW MEXICO JUNIOR COLLEGE
RESOLUTION CREATING A POLICY ON
LABOR MANAGEMENT RELATIONS**

BE IT RESOLVED BY THE NEW MEXICO JUNIOR COLLEGE GOVERNING BOARD:

SECTION 1. SHORT TITLE.— This Resolution may be cited as the “New Mexico Junior College Labor Management Relations Policy”.

SECTION 2. PURPOSE OF THE POLICY.— The purpose of the Labor Management Relations Policy is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer, to promote harmonious and cooperative relationships between the employer and the employees, and to acknowledge the rights of the students to an orderly and uninterrupted quality education.

SECTION 3. CONFLICTS.— In the event of conflict with other New Mexico Junior College Policies, the provisions of the New Mexico Junior College Labor Management Relations Policy shall supersede other previously enacted policies; provided that the New Mexico Junior College Labor Management Relations Policy shall not supersede the College Governing Board’s adopted Faculty and Staff Handbooks, or State and Federal Statutes.

New Mexico Junior College administrative directives, departmental rules and regulations, and work place practices shall prevail unless there is a conflict with a collective bargaining agreement. Where a conflict exists the collective bargaining agreement shall prevail.

SECTION 4. DEFINITIONS.— As used in the New Mexico Junior College Labor Management Relations Policy:

A. “appropriate bargaining unit” means a group of public employees designated by New Mexico Junior College’s Labor Management Relations Board for the purpose of collective bargaining;

B. "appropriate governing body" means the policymaking body or individual representing a public employer as designated in Section 7 of the Public Employee Bargaining Act;

C. "authorized card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;

D. "certification" means the designation by the New Mexico Junior College Labor Management Relations Board of a labor organization as the exclusive representative for all public employees in an appropriate bargaining unit;

E. "collective bargaining" means the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment;

F. "confidential employee" means an employee who devotes a majority of work time to formulate labor-management policies or to assist anyone who formulates such policies;

G. "emergency" means a one-time occurrence of a "manifest crisis";

H. "exclusive representative" means a labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining;

I. "impasse" means failure of a public employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

J. "labor organization" means an employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations;

K. "local board" means the New Mexico Junior College Labor Management Relations Board established by a public employer, other than the state, through ordinance, resolution or character amendment;

L. "lockout" means an act by a public employer to prevent its employees from going to work for the purpose of resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

M. "management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs on an occasional basis;

N. "mediation" means assistance by an impartial third party to resolve an impasse between a public employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice;

O. "professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advance nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;

P. "public employee" means a regular nonprobationary employee of New Mexico Junior College;

Q. "public employer" means the New Mexico Junior College Labor Management Relations Board;

R. "strike" means a public employee's refusal, in concerted action with other public employees, to report for duty or his willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; and

S. "supervisor" means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively, but "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of his subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.

SECTION 5. RIGHTS OF PUBLIC EMPLOYEES.— Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall have the right to refuse any such activities.

SECTION 6. RIGHTS OF PUBLIC EMPLOYERS.— Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

A. Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;

B. Determine qualifications for employment and the nature and content of personnel examinations;

C. Take actions as may be necessary to carry out the mission of the public employer in emergencies; and

D. Retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

SECTION 7. APPROPRIATE GOVERNING BODY—PUBLIC EMPLOYER.— The appropriate governing body of a public employer is the New Mexico Junior College Board.

SECTION 8. LOCAL BOARD—CREATED.--

A. The New Mexico Junior College Labor Management Relations Board is hereby created. The New Mexico Junior College Labor Management Relations Board shall be composed of three members appointed by the New Mexico Junior College Board. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of individuals representing management and one member shall be appointed on the recommendation of the first two appointees.

B. Local board members shall serve one-year terms. Local board members may serve an unlimited number of terms. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term.

C. During the term for which he is appointed, a local board member shall not hold or seek any other political office or public employment or be an employee of a union or an organization representing public employees or public employers.

D. Each local board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

SECTION 9. LOCAL BOARD—POWERS AND DUTIES.—

A. The local board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for:

- (1) the designation of appropriate bargaining units;
- (2) the selection, certification and decertification of exclusive representatives; and
- (3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The local board shall:

- (1) hold hearings and make inquiries necessary to carry out its functions and duties;
- (2) request information and data from public employers and labor organizations to carry out the local board's functions and responsibilities; and
- (3) hire personnel or contract with third parties as the appropriate governing body deems necessary to assist the local board in carrying out its functions.

C. The local board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The local board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The local board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The local board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions.

E. The local board has the power to enforce provisions of the Public Employee Bargaining Act or a local collective bargaining ordinance, resolutions or charter amendment through the imposition of appropriate administrative remedies.

SECTION 10. HEARING PROCEDURES.--

A. The local board may hold hearings for the purposes of:

(1) information gathering and inquiry;

(2) adopting rules; and

(3) adjudicating disputes and enforcing the provisions of the Public Employee Bargaining Act and rules adopted pursuant to the act.

B. The local board shall adopt rules setting forth procedures to be followed during hearings of the local board. The procedures adopted for conducting adjudicatory hearings shall meet all minimal due process requirements of the state and federal constitutions.

C. The local board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by the local board. At the conclusions of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the local board for its decision.

D. A rule proposed to be adopted by the local board that affects a person or governmental entity outside of the local board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the local board. The public hearing shall be held after notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All

meetings of local boards shall be held in the county of residence of the local public employer. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the county, and notice shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

E. All adopted rules shall be filed in accordance with applicable state statutes.

F. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the local board.

SECTION 11. APPROPRIATE BARGAINING UNITS.--

A. The local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups, clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, security, corrections and supervisory employees. The parties, by mutual agreement, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act; provided, however, that no supervisory employee may be consolidated or otherwise included in a bargaining unit with non-supervisory employees.

B. Within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit, the local board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

C. The local board shall not include in an appropriate bargaining unit managers or confidential employees.

SECTION 12. ELECTIONS.--

A. Whenever, in accordance with rules prescribed by the local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if Forty Percent (40%) of the eligible employees in the bargaining unit vote in the election.

B. Once a labor organization has filed a valid petition with the local board calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the local board and the public employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. As an alternative to the provisions of Subsection A of this section, a public employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The local board shall not certify an appropriate bargaining unit if the public employer objects to the certification without an election.

D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The local board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the local board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 16 of the Public Employee Bargaining Act.

SECTION 13. EXCLUSIVE REPRESENTATION.--

A. A labor organization that has been certified by the local board as representing the public employees in the appropriate bargaining unit shall be the exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering

all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interest of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.

SECTION 14. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.--

A. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the local board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the local board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the public

employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the local board shall not accept a request for a decertification election earlier than twelve months subsequent to the labor organization's certification as the exclusive representative.

SECTION 15. SCOPE OF BARGAINING.--

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act or the Educational Retirement Act, public employers and exclusive representatives;

(1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to the proposal or to make a concession; and

(2) shall enter into written collective bargaining agreements covering employment relation.

B. The obligation to bargain collectively imposed by the Public Employee Bargaining Act shall not be construed as authorizing a public employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state. In the event of conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

C. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be

certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. The public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.

D. An impasse resolution or an agreement provision between New Mexico Junior College and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation for wages by the governing body and the availability of funds.

E. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act; provided that, in any judicial review of the award, the court shall determine whether the award is arbitrary, unlawful, unreasonable, capricious or not based on substantial evidence. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

F. The following meetings shall be closed:

- (1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the public employer and the exclusive representative of the public employees of the public employer;
- (2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.

SECTION 16. IMPASSE RESOLUTION.--

A. The following impasse procedures shall be followed by New Mexico Junior College and exclusive representatives:

(1) if an impasse occurs, either party may request from the local board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the local board to assist negotiations unless the parties agree to another mediator; and

(2) if the impasse continues after a sixty-day mediation period, either party may request the formation of an arbitration panel. Upon the request for an arbitration panel, the unresolved issues shall be resolved pursuant to the Uniform Arbitration Act by an arbitration panel consisting of one member appointed by the exclusive representative, one member appointed by the public employer and a third member appointed by the other two members; provided that, in any judicial review of the decision of the arbitration panel, the court shall determine whether the decision is arbitrary, capricious or unlawful.

C. New Mexico Junior College may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

D. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement.

SECTION 17. PUBLIC EMPLOYERS—PROHIBITED PRACTICES.—A public employer or his representative shall not:

A. Discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

B. Interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act;

C. Dominate or interfere in the formation, existence or administration of labor organization;

D. Discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

E. Discharge or otherwise discriminate against a public employee because he has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization;

F. Refuse to bargain collectively in good faith with the exclusive representative;

G. Refuse or fail to comply with provisions of the Public Employee Bargaining Act or board rule; or

H. Refuse or fail to comply with a collective bargaining agreement.

SECTION 18. PUBLIC EMPLOYEES—LABOR ORGANIZATION—PROHIBITED PRACTICES.—A public employee or labor organization or its representative shall not:

A. Discriminate against a public employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

B. Interfere with, restrain or coerce any public employee in the exercise of a right guaranteed pursuant to the provisions of the Public Employee Bargaining Act;

C. Refuse to bargain collectively in good faith with a public employer;

D. Refuse or fail to comply with a collective bargaining or other agreement with the public employer;

E. Refuse or fail to comply with a provision of the Public Employee Bargaining Act; or

F. Picket homes or private business of elected officials or public employees.

SECTION 19. STRIKES AND LOCKOUTS PROHIBITED.--

A. A public employee or labor organization shall not engage in a strike. A labor organization shall not cause, instigate, encourage or support a public employee strike. A public employer shall not cause, instigate or engage in a public employee lockout.

B. A public employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

SECTION 20. AGREEMENTS VALID--ENFORCEMENT.--

Collective bargaining agreements and other agreements between public employers and exclusive representatives shall be valid and enforceable according to their terms when entered into in accordance with the provisions of the Public Employee Bargaining Act.

SECTION 21. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW.--

A. The local board may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act, including those for appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the local board. It shall uphold the action of the local board and take appropriate action to enforce it unless it concludes that the order is:

- (1) arbitrary, capricious or an abuse of discretion; or

(2) otherwise not in accordance with law.

B. A person or party, including a labor organization affected by a final rule, order or decision of the local board, may appeal to the district court for further relief. All such appeals shall be based upon the record made at the local board hearing. All such appeals to the district court shall be taken within thirty days of the date of the final rule, order or decisions of the local board. Actions taken by the local board shall be affirmed unless the court concludes that the action is:

(1) arbitrary, capricious or an abuse of discretion; or

(2) otherwise not in accordance with the law.

SECTION 22. SEVERABILITY. ^{the resolution} If any party or application of ~~the Public Employee Bargaining Act~~ is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 23. EFFECTIVE DATE. The effective date of the provisions of this resolution is July 1, 2003.



NEW MEXICO JUNIOR COLLEGE

Office of the President

Memo

DATE: October 6, 2003
TO: New Mexico Junior College Board Members
FROM: Steve McCleery
SUBJECT: Consideration of the Kornegay Trust Agreement

In May of 2002 the Board approved the transfer of the Kornegay Trust to the New Mexico Junior College Foundation. At the May 2002 meeting, the NMJC Board asked the Foundation to present a Kornegay Trust Endowment Agreement to the NMJC Board. Attached you will find the Trust Endowment Agreement. I am recommending that you approve the agreement.

Thank you for your consideration.

WILLIAM G. W. SHOBRIDGE

DIANNA L. LUCE

SHOBRIDGE LAW FIRM, P. C.

701 NORTH GRIMES STREET
HOBBS, NEW MEXICO 88240

(505) 397-2496

FAX: (505) 397-2497

E-MAIL: shooblaw@aol.com

October 6, 2003

Dr. Steve McCleery
New Mexico Junior College
5317 Lovington Highway
Hobbs, New Mexico 88240

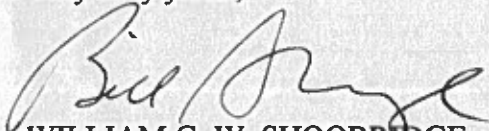
Re: Kornegay Trust Fund Endowment Agreement

Dear Dr. McCleery:

I have reviewed the Endowment Agreement prepared by the New Mexico Junior College Foundation concerning the Kornegay Trust Fund. Although I am not an expert on trusts or endowments, the document appears to be in compliance with the Foundation's gift acceptance policies and procedures, as well as, its bylaws. The Endowment Agreement also appears to meet the requirements for adoption of investment policy for investing endowment funds set out in Section 21-1-38 NMSA.

If a more detailed evaluation is required, I suggest the Endowment Agreement be reviewed by an expert in trusts and endowments. However, based upon my limited review of the agreement, I approve the document as written.

Very truly yours,


WILLIAM G. W. SHOBRIDGE

/yj

cc: C.C. Nelson
Executive Director
New Mexico Junior College Foundation
Scotty Holloman, Esq. (w/enc)
Attorney for New Mexico Junior College Foundation

ENDOWMENT AGREEMENT

New Mexico Junior College Foundation hereby declares that it has received the **Earl and Annie Lee Kornegay Trust Fund** and hereby declares itself or its successor(s) to be the Trustee(s) of said sum. As such Trustee, New Mexico Junior College Foundation will hold said sum as an endowment in perpetuity, subject to the following uses, terms, and limitations:

Article 1 - Name of endowment

The endowment shall be known as the **Earl and Annie Lee Kornegay Endowment**.

Article 2 - Establishment of corpus and endowment

The initial distribution of the **Earl and Annie Lee Kornegay Trust** shall be known collectively as the "corpus" of the endowment. The corpus shall be preserved in perpetuity and shall not be invaded for any purpose without the express written consent of the New Mexico Junior College Board of Directors and the New Mexico Junior College Foundation Board of Directors.

Article 3 - Additions

Additions may be made to the corpus of the endowment at any time and in any increments.

Article 4 - Investment

The Trustee shall have the power to sell, purchase, invest, and reinvest endowment funds, and any portion thereof, in such securities or other instruments as the Trustee may deem advisable. In all cases the investment of the corpus shall follow New Mexico Junior College Foundation Investment Policy.

Article 5 - Spending Policy

Spensible income from the endowment shall be calculated annually as a percentage of interest earned on the endowment. The maximum allowable percentage of earnings on the endowment that may be expended annually must be in compliance with the New Mexico Junior College Foundation's overall investment and spending policy.

Unmatched portion of the gift - Of the allowable amount that may be expended annually, ten percent (10%) shall be transferred to the New Mexico Junior College Foundation's general fund, a minimum of ten percent (10%) shall be returned to the principal and reinvested, and the remaining percentage shall be distributed for the purposes designated by the donor. If in the best judgment of the New Mexico Junior College Foundation Board of Directors, it is deemed wise and prudent, a portion of the distributable percentage may be returned to the principal and be reinvested. Endowment funds may be pooled with other invested assets for purposes of determining total annual return.

Portion of the gift matched by Title V federal funds - All earnings shall be returned to the principal and reinvested. At the end of the grant term, September 30, 2020, earnings may be distributed in accordance with Article 6 of this agreement. In addition, if in the best judgement of the New Mexico Junior College Foundation Board of Directors, it is deemed wise and prudent, a portion of the distributable percentage may be returned to the principal and be reinvested. Endowment funds may be pooled with other invested assets for purposes of determining total annual return.

Article 6 - Purposes

The portion of endowment income that is allocated to purposes designated by the donor shall be used as follows:

- Student scholarships to students with a passing GPA and with no limitations on the students' geographic home
- Operational expenses for the NMJC Foundation Office to include items such as annual audits, directors and officers liability insurance, executive director salary and benefits, support staff salary and benefits, equipment, etc.
- Awards for items such as faculty grants and outstanding professor and support/maintenance staff
- Operational expenses of the College such as endowed faculty chairs, operations of the Western Heritage Museum, etc.
- Goodwill expenditures such as special college functions, bereavement or congratulatory acknowledgments, entertainment, etc.

If, in the future, circumstances should arise that make it illegal or infeasible to use the gift for the purposes specified above, then the Executive Director of the New Mexico Junior College Foundation may submit a request for modification of this purpose to the Board of Directors of the New Mexico Junior College Foundation. If, in the best

judgment of the Board of Directors, such modification is deemed wise and prudent, they may authorize the use of the income from the endowment fund for the fulfillment of other objectives as near as practical to the primary purpose of the endowment fund.

Article 7 - Recipient Selection

Prospective scholarship recipients shall be recommended by New Mexico Junior College Financial Aid Office or its successor(s). The New Mexico Junior College Financial Aid Office Scholarship Committee or their successor(s) shall select recipients and determine the monetary amount of the award within the boundaries as established by the donor(s) expressed purpose(s).

Article 8 - Timing of Awards

The Trustee shall have the power to determine the date(s) of awards.

Article 9

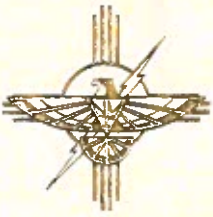
The endowment is irrevocable.

Article 10

Should the official designation or name of any unit of the New Mexico Junior College Foundation or New Mexico Junior College mentioned herein be changed, then that unit or organization most nearly performing the responsibilities of said organization shall be construed to have the responsibilities as herein set out.

Article 11

The initial contribution is being made by the disbursement of the Earl and Annie Lee Kornegay Trust with the understanding that it will be matched to the extent possible under the Title V Program endowment challenge grant. It is understood that no endowment earnings may be expended until September 30, 2004, and only endowment earnings on the donors' portion of the endowment may be expended until September 30, 2020.



NEW MEXICO JUNIOR COLLEGE

Office of the President

Memo

DATE: October 6, 2003
TO: New Mexico Junior College Board Members
FROM: Steve McCleery *sm*
SUBJECT: Consideration of the Jal Proclamation

Attached you have the Jal Proclamation which calls for an election on December 16, 2003 to include the Jal Public School District into the New Mexico Junior College voting district. It is my recommendation that you approve the proclamation.

Thank you for your consideration.

PROCLAMATION FOR SPECIAL ELECTION FOR ADDITION
AND INCLUSION OF JAL PUBLIC SCHOOL DISTRICT NO. 34
TO THE COMMUNITY COLLEGE DISTRICT OF NEW MEXICO
JUNIOR COLLEGE, A COMMUNITY COLLEGE

IT APPEARING to the Board of New Mexico Junior College, a Community College, that the requisite numbers of qualified electors within the territorial limits of Jal Public School District No. 34, Lea County, New Mexico, have petitioned the New Mexico Commission on Higher Education to be added to the New Mexico Junior College district, as provided in Section 21-13-21, NMSA 1978; and

IT APPEARING FURTHER to the Board that the New Mexico Commission on Higher Education conducted a survey pursuant to Section 21-13-21(B), NMSA 1978, and pursuant thereto, on Friday, April 11, 2003, took formal action approving the aforesaid Petition, and authorizing the calling of an election within the petitioning school district, on the question of the inclusion of Jal Public School District No. 34, Lea County, New Mexico, in the New Mexico Junior College District; and,

RESOLVED, DETERMINED AND PROCLAIMED, by the Board of New Mexico Junior College, a Community College constituting the governing body of said Institute, that a Special Election shall be held on Tuesday, December 16, 2003, in accordance with the requirements of the School Election Law, Sections 1-22-1 to 1-22-19, NMSA 1978, on the question of the inclusion of Jal Public School District No. 34, Lea County, New Mexico, in the New Mexico Junior College District, and, at such Election the following question shall be submitted to the qualified, registered electors of the Jal Public School District No. 34. "Shall the Jal Public School District No. 34, Lea County, New Mexico be included in the Community College District of New Mexico Junior College, a Community College?"

RESOLVED, DETERMINED AND PROCLAIMED, by the Board, that the following constitute the Precincts in Lea County in which the Special Election will be held, and within said Precincts, the location of the polling places for said Special Election, which polling places shall be open from 7:00 a.m. to 7:00 p.m. on the date of the special election on December 16, 2003, within the following public school districts, to wit: Jal Public School District No. 34:

JAL PUBLIC SCHOOL DISTRICT NO. 34

Precincts

Lea County Precinct 73, 74
and that portion of 71 within
the Jal Public School District

Absentee

Polling Places

Woolworth Community Library
Third & Utah
Jal, New Mexico

Lea County Clerk's Office
Lea County Courthouse
Lovington, New Mexico

AND IT IS FURTHER RESOLVED, DETERMINED AND PROCLAIMED, by the Board, that a person is qualified elector for this Special Election if he or she is a citizen of the United States, at least 18 years of age on the day of the Special Election, and a resident of the Jal Public School District within which such person shall vote; that in order to vote, qualified electors must have previously registered with the County Clerk of Lea County, that any qualified elector of the Jal Public School District within which this election shall be conducted, who is not now registered and who wishes to vote at such Special Election shall register during regular office hours prior to 5:00 p.m. on November 18, 2003, being the twenty-eighth day immediately preceding the Special Election, at the office of the County Clerk for the Jal Public School District, or shall register with any registration agent at a designated agency as provided in Sections 1-4-47 and 1-4-48, NMSA 1978; and it is further,

RESOLVED, DETERMINED AND PROCLAIMED, by the Board, that absentee voting for the Special Election shall be permitted in the manner authorized by Sections 1-6-1, et seq., NMSA 1978, provided, however, that pursuant to Section 1-22-19, NMSA 1978, qualified electors may also vote absentee in person at the office of the County Clerk for Lea County, during the regular hours and days of business from 8:00 a.m. on November 21, 2003 being the twenty-fifth day preceding the Special Election, until 5:00 p.m. on December 12, 2003, being the Friday immediately prior to the Special Election.

Any information concerning absentee ballots, polling places, or any other matters relating to the election can be obtained from the Office of the County Clerk, Lovington, Lea County, New Mexico.

IN TESTIMONY WHEREOF, the New Mexico Junior College Board of the New Mexico Junior College District, Lea County, New Mexico has caused this notice to be published as required by law and dated this 16th day of October, 2003.

Larry Hanna
Chairman, New Mexico Junior College Board

ATTEST: _____
SECRETARY



NEW MEXICO JUNIOR COLLEGE

Office of the President

Date: October 6, 2003
TO: New Mexico Junior College Board
From: Steve McCleery *SM*
Subject: Auction List

Attached is a list of equipment we intend to sell at the next institutional auction. Once approved by the Board, the equipment list must be presented to the State Auditor for review. During the 30 day required waiting period, the administration will proceed with preparation for the auction. The items on the auction list are no longer utilized or needed in the current equipment inventory. It is my recommendation that the Board approve the list for the institutional auction.

Thank you for your consideration!

**NEW MEXICO JUNIOR COLLEGE
MISC. ITEMS TO BE SOLD AT AUCTION**

- 1 85Mb External Hard Drive
- 2 Apple Style writer
- 3 JAZ Zip Drive
- 4 E/M Appart measr. Ratio
- 5 Apple 3.5 External Disk drive
- 6 50060 Mounting System
- 7 Scaler Rate meter
- 8 Tabe top podium
- 9 Assort. Software
- 10 35 misc. chairs
- 11 (2) Two Gold sifters
- 12 (1) Black plastic Sifter
- 13 Painting - Pastel Colors w/red gears
- 14 Epson LQ-570 printer
- 15 (10) Ten Mud Balancing scales w/case
- 16 Realistic Sound Meter
- 17 LaMotte DC 1600 Colorimeter
- 18 (12)Twelve Fann Dresser Visco meters
- 19 MSA Kwik draw pump
- 20 Dresser MagCobar
- 21 (2) Two 10amp battery chargers
- 22 (2) Two Explosimeter Combustible Gas Indic.
- 23 (11) Eleven Swift Microscopes
- 24 Panasonic Printer
- 25 Projector film sound
- 26 (3) cannon calculators
- 27 Analytical Centrifuge
- 28 Centrione centrifuge
- 29 Stereo microscope
- 30 Panametrics Mod 700 Hygrometer
- 31 (2) carts
- 32 Welch Maniquin
- 33 Craftsman band saw 12"
- 34 Several misc. tables
- 35 Several misc. wood cabinets and shelving
- 36 Several misc. metal cabinets and shelving
- 37 Art Waxer
- 38 Dual level PC table
- 39 Autofold folding machine
- 40 Rockwell sander, finisher
- 41 Several misc. Electronics equipment
- 42 Geriatric chair
- 43 Wheel chair
- 44 Several misc. black boards bulletin boards
- 45 Unives Meat slicer
- 46 Cloth picture
- 47 Several metal and wooden desk
- 48 Misc. oil field teaching aids
- 49 Misc. environmental teaching aids
- 50 Craftsman High pressure washer
- 51 Craftsman 10" miter saw
- 52 Misc. small hand tools- rounter, sanders
- 53 (20) Twenty student desk
- 54 Several misc. optical illuminators w/ shields
- 55 Paper cutter
- 56 Panasonic TV
- 57 (2) Toilets
- 58 (2) urnals
- 59 Misc. clocks
- 60 (9) air bottles
- 61 Misc. glass and plastic wear
- 62 PVC pipe
- 63 Backpack air bottle w/mask
- 64 Misc. oilfield testing kits
- 65 Califone cassette recorder
- 66 Science table
- 67 Projector screen
- 68 (7) zip drives
- 69 Yellow, white and green safety suits
- 70 Green rubber boots
- 71 (4) Doors
- 72 Misc. filing cabinets
- 73 (10) Pilot Mud testing kits
- 74 (10) Geoscopes Model# RRS
- 75 Ken-A-Vision microprojector
- 76 (2) Quebec Colony counters
- 77 Colony Counter
- 78 Bact Cunter
- 79 Fluoroscope
- 80 Gray carring case
- 81 Yellow carring case
- 82 (3) RF Generators
- 83 (8) Mercury ARC light sourc.
- 84 Oscillator audio
- 85 (3) Sodium ARC light source
- 86 Delta Bench drill press
- 87 Acceleraton apparatus
- 88 Misc. electronics equipment
- 89 Cenco vacuum
- 90 Carrier A/C
- 91 Rubber Maid computer desk
- 92 Eurla Vacuum
- 93 Reznor heater unit
- 94 Trane A/C unit
- 95 Arcoaire a/c unit

NEW MEXICO JUNIOR COLLEGE		MAJOR/ MINOR INVENTORY TO BE REMOVED							
NMJC NO	OLD	DESCRIPTION	SERIAL NO	ACC. NO	ACQ. DATE	ACQ. VALUE	COMMENTS		
1	G30258	NA Gateway 15 Monitor"	S018534764N	3-2741-43-901	8/19/1996	\$ -	auction		
2	N11523	19232 Apple 14 Inch Monitor	CY325D9E0B7	7-2741-94112	8/1/1993	\$ -	auction		
3	N11571	19283 Apple 14 Inch Monitor	SG331K2JE04	7-2741-93351	8/1/1993	\$ -	auction		
4	N11575	19287 Apple 14 Inch Monitor	SG331K2NE04	7-2741-93351	8/1/1993	\$ -	auction		
5	N11666	19774 Epson 14 Inch Monitor	*3535149254	7-2741-94112	9/1/1993	\$ -	auction		
6	N12343	21497 Apple 15 Inch Monitor	CJ536DZ839X	1-2741-14-140	12/1/1995	\$ -	auction		
7	N12661	21970 Apple 15 Inch Monitor	CJ6042PQ39X	1-2741-11-510	5/1/1996	\$ -	auction		
8	N12694	NA Apple 15 Inch Monitor	CJ5338UU39X	7-2741-96-060	5/30/1996	\$ -	auction		
9	G30762	NA Apple 17 Monitor"	CY8072T5AZ9	3-2741-43-921	6/15/1998	\$ -	auction		
10	G30803	NA Apple 17 Monitor"	CY8290D4AZ9	3-2741-43-921	10/20/1998	\$ -	auction		
11	G30805	NA Apple 17 Monitor"	CY8290D3AZ9	3-2741-43-921	10/20/1998	\$ -	auction		
12	G30797	NA Apple 17 Monitor"	CY8290CYAZ9	3-2741-43-921	10/20/1998	\$ -	auction		
13	N15202	NA Apple 17 Monitor"	CY8303TVAZ9	2-2741-52-710	10/20/1998	\$ -	auction		
14	N16439	NA CS Drilling/Workover Simulator/Monitor	8134502550	1-2741-11-590	6/1/2001	\$ -	auction		
15	N16440	NA Workover Simulator/Ram Modular Unit	None	1-2741-11-590	6/1/2001	\$ -	auction		
16	N16441	NA Workover Simulator/Drilling & Rotary Modular Unit	None	1-2741-11-590	6/1/2001	\$ -	auction		
17	N16442	NA Workover Simulator/Drilling Pressure Modular Unit	None	1-2741-11-590	6/1/2001	\$ -	auction		
18	N16443	NA Workover Simulator/Pump Modular Unit	None	1-2741-11-590	6/1/2001	\$ -	auction		
19	N13774	19005 Digital VT-320 Terminal	HK05117889	4-2435-43132	1/1/1993	\$ 289.00	auction		
20	N13349	15300 Digital VT-320 Terminal	TA835J221	0-140.-0020	10/1/1988	\$ 380.00	auction		
21	N11855	20325 Digital LA75 Plus Printer	TY34537358	1-2741-14-110	7/1/1994	\$ 500.00	auction		
22	N16434	NA McMurray Hughes Gas Lift Simulator	None	1-2741-11-590	6/1/2001	\$ 500.00	auction		
23	N16435	NA Simtran Well Control Simulator	1019	1-2741-11-590	6/1/2001	\$ 500.00	auction		
24	N11034	16188 Oscilloscope - Model 2-120	167-14896	2-7211-1864	8/1/1990	\$ 510.00	auction		
25	N10759	15269 IBM WheelWriter III Typewriter	11 3100550	7-010.-0385	10/1/1988	\$ 535.00	auction		
26	N10764	15274 IBM WheelWriter III Typewriter	11 3096003	7-010.-0385	10/1/1988	\$ 535.00	auction		
27	N16269	NA Lyon Heavy-Duty Storage Cabinet	None	1-2741-11-590	11/30/2000	\$ 542.30	auction		
28	N10946	15682 Monarch 868 Ergometer - Recond	None	0-420.-0030	1/1/1990	\$ 550.00	auction		
29	N10601	14428 Hercules Stuffing Box	None	0-430.-0030	4/1/1985	\$ 568.49	auction		
30	N10123	8102 Belt Sander	IC3734	Unknown	6/1/1977	\$ 575.00	auction		
31	N10907	15589 IBM WheelWriter X Typewriter	11-0231516	7-010.-0375	11/1/1989	\$ 588.00	auction		
32	N10619	14495 Color 19 Inch Monitor	15993045	3-080.-0030	6/1/1985	\$ 588.25	auction		
33	G30374	21894 Millers Confined Space Tripod	None	3-2741-43-902	12/1/1995	\$ 591.20	auction		
34	N10664	14874 Desk - Steelcase - Double Pede	None	7-011.-0460	3/1/1986	\$ 601.40	auction		
35	N14667	NA Apple17Monitor	CY73220X5X5	1-2741-14-123	10/15/1997	\$ 607.00	auction		
36	N14621	NA Groundwater Simulation System	None	1-2741-11-510	6/18/1997	\$ 626.92	auction		
37	N12561	50968 Plate Development Sink Huarc M	85J82-5	3-10.3-0	1/1/1983	\$ 637.58	auction		
38	N10150	8474 Sony 19 Inch Color Monitor	623625	-15	5/1/1978	\$ 641.00	auction		
39	N10291	10547 Monarch Ergometer Bike	None	-58	3/1/1982	\$ 679.45	auction		

NEW MEXICO JUNIOR COLLEGE		MAJOR/ MINOR INVENTORY TO BE REMOVED							
NMJC NO	OLD	DESCRIPTION	SERIAL NO	ACC. NO	ACQ. DATE	ACQ. VALUE	COMMENTS		
40	N10292	10548 Monarch Ergometer Bike	None	-58	3/1/1982	\$ 679.45	auction		
41	N10294	10550 Monarch Ergometer Bike	None	-58	3/1/1982	\$ 679.45	auction		
42	G30251	NA Christie Battery Charger	4039601	3-2741-43-140	6/21/1996	\$ 685.00	auction		
43	N10524	12866 IBM Color Monitor	216619	7-010.-0375	6/1/1984	\$ 687.60	auction		
44	N111770	20038 DEC Laser 1152 Printer	CJ25202165	2-2741-52-710	3/1/1994	\$ 688.55	auction		
45	N111221	17454 Lat Pull Machine	None	2-7411-1861	11/1/1990	\$ 694.00	auction		
46	N11222	17455 Lat Pull Machine	None	2-7411-1861	11/1/1990	\$ 694.00	auction		
47	G31014	NA IonPac CS 12A Analytical Column	5408	3-2741-43-103	4/7/1999	\$ 696.00	auction		
48	N11388	18617 Apple Hi Res RGB Monitor	7007015M0401LL	7-2741-11861	12/1/1991	\$ 699.30	auction		
49	N10517	12857 Gas Meter Station	None	None	3/1/1984	\$ 700.00	auction		
50	N12873	10538 Monarch Ergometer Bike	None	-58	3/1/1982	\$ 708.75	auction		
51	N10796	15342 Apple Hi Res RGB Monitor	5146670	3-120.-0030	12/1/1988	\$ 709.79	auction		
52	N10267	10386 Monarch Ergometer Bike	None	-58	1/1/1982	\$ 711.29	auction		
53	N15154	NA Field Cable	None	1-2741-11-510	6/4/1998	\$ 720.00	auction		
54	G31013	NA IonPac AS 14 Analytical Column	7128	3-2741-43-103	4/7/1999	\$ 726.00	auction		
55	N15103	NA Hewlett Packard ScanJet 6100C	SG8391404M	1-2741-14-123	4/15/1998	\$ 745.10	auction		
56	N15155	NA CI Probe	None	1-2741-11-510	6/4/1998	\$ 748.80	auction		
57	N16796	NA Lamott Colorimeter	1915-2501	1-2641-11-509	11/20/2001	\$ 749.00	auction		
58	N10782	15296 Easy Coat 14 Waxer	7558	7-010.-0385	10/1/1988	\$ 750.00	auction		
59	N10519	12859 Type M DP Mandrel/Gas Lift Val	None	None	6/1/1984	\$ 800.00	auction		
60	N15418	NA Enviro Products Petrotrap	NA	1-2741-11-510	6/25/1999	\$ 822.00	auction		
61	N10644	14601 IBM WheelWriter V Typewriter	81485011583	3-050.-0030	11/1/1985	\$ 836.00	auction		
62	N10809	15378 Monarch 818 Bike	None	0-420.-0020	4/1/1989	\$ 849.00	auction		
63	N10810	15379 Monarch 818 Bike	None	0-420.-0020	4/1/1989	\$ 849.00	auction		
64	N10811	15380 Monarch 818 Bike	None	0-420.-0020	4/1/1989	\$ 849.00	auction		
65	N10227	9929 Dewalt Radial Arm Saw	81130272	-1065	12/1/1981	\$ 850.00	auction		
66	G31015	NA Suppressor CSRS-Ultra 4mm	4043	3-2741-43-103	4/7/1999	\$ 851.00	Auction		
67	G31016	NA Suppressor ASRS-Ultra 4mm	5925	3-2741-43-103	4/7/1999	\$ 851.00	auction		
68	N11464	19054 Macintosh PowerBook Duo Dock S	TF30214RG09	4-2741-43-155	2/1/1993	\$ 858.00	auction		
69	N10098	7519 Arbor Tilting Saw	11566	4507	9/1/1975	\$ 859.00	auction		
70	G31655	NA Aquaterr EC-200 Soil Salinity Meter	None	3-2641-43-141	12/1/2001	\$ 895.00	auction		
71	N11289	17957 Deluxe Hispanic Texas Doll	None	7-2741-11871	3/1/1991	\$ 897.00	auction		
72	N12372	21675 Apple 17 Inch Monitor	S15231ZH1XX	2-2741-52-710	2/1/1996	\$ 931.00	auction		
73	G30124	21633 YSI Temperature Level & Conditioner	95G35717	3-2741-43-902	10/1/1995	\$ 952.98	auction		
74	G30173	21743 Survey Meter Calibration Unit	125010	3-2741-43-902	12/1/1995	\$ 985.00	auction		
75	G30174	21744 Survey Meter Calibration Unit	123753	3-2741-43-902	12/1/1995	\$ 985.00	auction		
76	G30073	15047 NEC Printer w/Tractor Feed	*581047446	7-010.-0398	11/1/1986	\$ 994.80	auction		
77	N10391	11177 Porta-Lab Mud Testing Kit	3131	4-30.3-0	3/1/1983	\$ 995.00	auction		
78	N10392	11178 Porta-Lab Mud Testing Kit	4114	4-30.3-0	3/1/1983	\$ 995.00	auction		

**NEW MEXICO JUNIOR COLLEGE
MAJOR/ MINOR INVENTORY TO BE REMOVED**

NMJC NO	OLD	DESCRIPTION	SERIAL NO	ACC. NO	ACQ. DATE	ACQ. VALUE	COMMENTS	
30	G31656	NA	YSI Dissolved Oxygen Meter Display	01J0533	3-2741-43-141	12/15/2001	\$ 1,865.00	auction
31	N10048	4961	Oscilloscope 547	8179	-2604	7/1/1970	\$ 1,875.00	auction
32	G30792	NA	Apple Macintosh G3 Desktop	XB8427XWD8X	3-2741-43-921	10/20/1998	\$ 1,887.00	auction
33	G30802	NA	Apple Macintosh G3 Desktop	XB84295YM6503LL/A	3-2741-43-921	10/20/1998	\$ 1,887.00	auction
34	G30804	NA	Apple Macintosh G3 Desktop	XB84296HM6503LL/A	3-2741-43-921	10/20/1998	\$ 1,887.00	auction
35	N15153	NA	Field Display Unit	NA	1-2741-11-510	6/4/1998	\$ 1,915.20	auction
36	G30260	NA	Gateway CPU - Pentium 133	5488603	3-2741-43-901	8/19/1996	\$ 1,961.00	auction
37	N15161	NA	MSA Passport Sample Pump	NA	1-2741-11-510	6/24/1998	\$ 2,099.26	auction
38	N11797	20099	Dell CPU - 486/66	3M685	7-2741-11000	6/1/1994	\$ 2,102.00	auction
39	G30761	NA	Apple PowerMac G-3/266 Computer	XB8181XXCY4	3-2741-43-921	6/15/1998	\$ 2,117.00	auction
40	N10526	12874	Invalco Net Oil Computer C-E45	None	0-430-0030	6/1/1984	\$ 2,141.30	auction
41	N11257	17890	Fibrometer Coagulation Timer	31744	2-7411-1871	1/1/1991	\$ 2,220.00	auction
42	N12622	51273	Carlson Halfone MicroComputer	199	7-010-0395	12/1/1985	\$ 2,375.00	auction
43	N12651	21956	Apple Power Macintosh 7500 Computer	FC6158VZ3FX	1-2741-11-510	5/1/1996	\$ 2,416.00	auction
44	N12655	21961	Apple Power Macintosh 7500 Computer	FC6158UK3FX	1-2741-11-510	5/1/1996	\$ 2,416.00	auction
45	N11296	18018	Salad Bar - 6'	None	7-2729-15854	8/1/1990	\$ 2,490.00	auction
46	N11550	19262	Macintosh Centris 650 Computer	XC335SLCCA2	7-2741-93351	8/1/1993	\$ 2,602.00	auction
47	N11551	19263	Macintosh Centris 650 Computer	XC3359D6CA2	7-2741-93351	8/1/1993	\$ 2,602.00	auction
48	N11552	19264	Macintosh Centris 650 Computer	XC33594DCA2	7-2741-93351	8/1/1993	\$ 2,602.00	auction
49	N15152	NA	Water Quality Monitoring System		1-2741-11-510	6/4/1998	\$ 2,966.40	auction
50	G30631	NA	Hitachi Pentium 166 Laptop Computer	XD029971736	3-2741-43-140	10/15/1997	\$ 3,034.00	auction
51	N10136	8208	Bar - Boring - Kwik Way	FN	-15	10/1/1977	\$ 3,084.00	auction
52	N12864	NA	Apple PowerMac 8500/150 Comput	XB6290VM8F7	1-2741-14-101	10/15/1996	\$ 3,223.00	auction
53	N15159	NA	Soil Gas Vapor Probe System	NA	1-2741-11-510	2/18/1999	\$ 3,534.30	auction
54	N11501	19154	Xante AccelaWriter 8100	81-138724	7-2741-94112	7/1/1993	\$ 3,712.00	auction
55	N15814	NA	Echo Meter w/CO2 and Gunshot Heads	None	Donated	6/30/2000	\$ 3,776.00	Auction
56	G30122	21628	HNU Photoionization (PID)	567049	3-2741-43-902	10/1/1995	\$ 3,782.29	auction
57	G30680	NA	Infocus Life Pro 220 Projection Unit	4X7440696	3-2741-43-140	11/1/1997	\$ 3,787.00	auction
58	G30388	NA	LitePro 210V LCD Projector	4T07300	3-2741-43-140	9/6/1996	\$ 4,484.00	auction
59	N15802	NA	1975 CME Auger Core Drilling Rig	None	Donated	6/30/2000	\$ 5,000.00	auction
60	N15812	NA	1 Set-Miniature Fishing Tools	None	Donated	6/30/2000	\$ 5,500.00	auction
61	G30172	21742	Total Petroleum HydroCarbon Analyzer	1534	3-2741-43-902	12/1/1995	\$ 8,500.00	auction
62	G30123	21629	Foxboro Organic Vapor Analyzer	A52255	3-2741-43-902	10/1/1995	\$ 8,836.98	auction
63	N10581	14333	ACTI V Line S25 Camera	3345	7-010-0385	2/1/1985	\$ 10,050.00	auction
64	N15073	NA	Versalite Portable Stage		7-2741-98-210	1/1/1998	\$ 11,730.00	Auction
65	G31657	NA	Heavy Duty Hollow Stem Auger w/Components	None	3-2741-43-141	12/21/2001	\$ 24,322.01	auction
66	N16436	NA	CS Drilling/Workover Simulator/CPU	603348	1-2741-11-590	6/1/2001	\$ 34,000.00	auction
							\$ 222,836.17	

NEW MEXICO JUNIOR COLLEGE

Invitation to Bid #941

**Purchase of New Vehicles for the College Motor Pool and Driver's
Education Program**

BOARD DOCUMENTS

Date:	October 16, 2003
Prepared by:	Dan Hardin Vice President for Finance

NEW MEXICO JUNIOR COLLEGE

BOARD DOCUMENTS

General Information

1. On September 9, 2003, legal notice was posted in one newspaper, requesting sealed bids for the purchase of New Vehicles for the College Motor Pool and Driver's Education Program
 - 1) The Hobbs Daily News Sun
2. Bid packets were sent to four potential bidders.
3. Four vendors submitted bids within the time frame specified by the bid package.
4. One vendor was present at the opening.
5. The Business Office has evaluated the bids received. Their recommendation is shown on Page 3.

NEW MEXICO JUNIOR COLLEGE

BOARD DOCUMENTS

Evaluation and Recommendations

The vendors responding to Invitation to Bid #941 were:

Permian Ford
Watson Truck & Supply
Western Chrysler - Plymouth
Jim Spence Oldsmobile

The Bid Tabulation Summary appears on the following page.

The Administration recommends acceptance of the bid for a new 2004 Chevrolet Suburban from Watson Truck & Supply for \$28,436.71.

The Administration recommends acceptance of the bid for a new 2004 Chevrolet Impala from Watson Truck & Supply for \$17,779.00.

Source of Funding: - Vehicles

Account # 7-2741-02230

(\$50,353.32 remaining in budget for FY 2003/2004, total purchase price of the two vehicles \$46,215.71.)

Invitation to Bid # 941

Purchase of 2003 or 2004 Suburban or Comprable Vehicle
 Purchase of 2003 or 2004 Vehicle for Driver's Education Program

Dealership	Sales Rep	Model	Vendor Preference Number	Bid Price*	Comments
Jim Spence	Brad Hawkins	2004 GMC Yukon XL	31R43	\$ 30,385.75	\$31,855 x .95
Permian Ford	Benny Hoyl	2003 Excursion	None	\$ 31,855.00	Rear Seat is Solid
		2003 Taurus SES		\$ 17,102.00	No Full Size Spare No Right hand Brake
Western Chrysler	Terry Criswell	2004 Dodge Stratus	71R34	\$ 17,761.20	\$18,696 x .95
Watson	Lou Ann Byrum	2004 Suburban	30R44	\$ 27,014.87	\$28,436.71 x .95
		2004 Impala		\$ 16,890.05	\$17,779 x .95

* 5% Consideration given to vendors who have a Vendor Preference Number.

NEW MEXICO JUNIOR COLLEGE

Invitation to Bid #942

**Installation of an 800 AMP Electrical Service
for a New Welding Lab**

BOARD DOCUMENTS

Date: October 16, 2003
Prepared by: Dan Hardin
Vice President for Finance

NEW MEXICO JUNIOR COLLEGE

BOARD DOCUMENTS

General Information

1. On September 23, 2003, legal notices were posted in three newspapers, requesting sealed bids for the Installation of an 800 AMP Electrical Service for a New Welding Lab.
 - 1) The Hobbs Daily New Sun
 - 2) Las Cruces Sun News
 - 3) Albuquerque Journal
2. Bid packets were sent to eight potential bidders.
3. Three vendors submitted bids within the time frame specified by the bid package.
4. One vendor was present at the opening.
5. The Business Office has evaluated the bids received. Their recommendation is shown on Page 3.

NEW MEXICO JUNIOR COLLEGE

BOARD DOCUMENTS

Evaluation and Recommendations

The vendors responding to Invitation to Bid #942 were:

K & S Electric
Kirkmeyer Electric
Premier Electric

The Bid Tabulation Summary appears on the following page.

The Administration recommends acceptance of the bid for installation of an 800 AMP Electrical Service for a New Welding Lab from K & S Electric for \$36,184.00.

**Source of funding: Building Renewal and Replacement
Account # 9-2729-02-020**

Invitation to Bid #942

**Installation of an 800 AMP Electrical Service
for a New Welding Lab**

<u>Business Name</u>		<u>Bid Price</u>
Kirkmeyer Electric	\$	94,308.00
Premier Electric	\$	79,790.00
K & S Electric	\$	36,184.00

NEW MEXICO JUNIOR COLLEGE
Personnel Recommendation for Board Consideration



The following candidate is being recommended for employment as follows: Date 10-10-03

Candidate's name Frank D. Collins

Position title Coordinator of Purchasing

New position Existing position Classification Faculty Professional Other

Is candidate related to another NMJC employee? yes no If so, to whom

Effective date of employment 10-20-03 Standard contract length 12 mos. 9 mos. other

Funding source NMJC Operating Budget - Business Office

Paid advertising beyond *standard Classified Line Ad in the Hobbs News-Sun

(* Standard: The Hobbs News-Sun, Direct Mail to approximately 51 colleges in a 5-state region, NM Dept. of Labor, NMJC Website, KLMA Radio & Lubbock TX Workforce Development Website)

Posted salary range 25,191 - 37,787 Recommended annual salary 35,446.00 Prorated salary yes no
(Employment date through June 30)

Account number(s) with respective % allocation(s) 1-2042-14-110 100%

Recommended and approved by:

Dan Hardin
Supervisor

Steve McCreary
Dean/Director

Vice President

President

Selection Committee Members: Dan Hardin, Vice President for Finance

Comments: Frank meet and/or exceeds the requirements for this position and is

familiar with New Mexico Junior College's departments.

ABBREVIATED RESUME

Position

Coordinator of Purchasing

Personal Data

Name: Frank D. Collins

Education

B.B.A., Eastern New Mexico University, Portales, NM, 1975

Professional Experience

Success Lending Services, Dallas, TX Mortgage Loan Consultant	5/03 to Present
Sandone Productions, Inc., Dallas, TX Sales Trainee and Installation	1/03 to 4/03
New Mexico Junior College, Hobbs, NM Coordinator of Purchasing	5/98 to 5/02
The Hand That Feeds You, Hobbs, NM Inventory Control and Production Planning	10/96 to 1/98
Citicorp Diners Club, Englewood, CO Legal Compliance Officer	8/91 to 7/95



New Mexico Junior College

Career Opportunities

Position Announcement • September 2003

Position Title: Coordinator of Purchasing

Position Description: The Coordinator of Purchasing reports to the Vice President for Finance. Primary responsibilities include the following: approve and coordinate College purchases; ensure compliance with Federal and State procurement laws and regulations; ensure compliance with NMJC purchasing policies and procedures; prepare formal sealed competitive bids and requests for proposals; conduct formal bid openings; maintain procurement and bid files for audit; establish and maintain vendor relations; maintain Federal GSA and State of NM SPD contracts and documentation; approve travel advance and reimbursement requests; ensure compliance with NM Per Diem and Mileage Act; monitor college budget accounts; accept other duties as assigned by the Vice President for Finance as may become necessary for the operation of the NMJC Business Office.

Qualifications: Bachelor's Degree in Business Administration from a regionally accredited institution preferred. Three to five years of related experience is required. Supervisory experience and working knowledge of public funds, accounting systems, auditing and technical writing is highly desirable. Ability to work effectively with NMJC staff and the public is required. Computer proficiency required.

Salary/Benefits: The Coordinator of Purchasing is a twelve-month professional position. Salary is competitive. Standard NMJC benefits apply. NOTE: NMJC does not participate in social security deductions.

Application Deadline: October 3, 2003, 5:00 p.m. MDT. To ensure consideration, all application materials must be received by the deadline. Please do not send any application materials via e-mail.

To Apply: Submit NMJC application form, letter of application, resume, unofficial transcripts (official transcripts required prior to employment), and three or more letters of reference to:

**Lisa Brown
Director of Human Resources
New Mexico Junior College
5317 Lovington Highway
Hobbs, NM 88240**

New Mexico Junior College is an Equal Opportunity, Affirmative Action Employer and does not discriminate against any applicant for employment because of race, color, national origin, sex, age, disability, or veteran status. Qualified applicants are encouraged to apply.

"Equal Opportunity Education and Employment"

5317 Lovington Highway, Hobbs, NM, 88240 • Phone: (505) 392-5229 • Fax: (505) 392-3589 • Toll Free: 1-800-657-6260 • E-mail: lbrown@nmjc.cc.nm.us



NEW MEXICO JUNIOR COLLEGE

Vice President for Instruction

DATE: October 7, 2003
TO: New Mexico Junior College Board of Trustees
SUBJECT: New Staff Position
FROM: Dr. Richard Fleming *RF*

During budget hearings it was decided to delay the approval of new positions until it was known what budget savings would be available to fund the positions. During the spring and summer of 2003 we hired eight faculty and two administrators. The attached spreadsheet reflects the budget savings as a result of these hirings.

The other attachments provide statistical data on the number of students being served in the Learning Assistance Center and being provided with one-on-one tutoring. When our Title V grant terminates next year we will lose the money currently being used for tutoring services. Therefore, it becomes necessary for us to begin to find new ways and methods to provide tutoring in a cost effective manner as well as new ways to provide learning services. In addition, one person currently supervises both the Testing Center and the Learning Assistance Center, using only student assistants to provide computer services.

I am, therefore, seeking approval from you to create and fill a new position, Coordinator of the Learning Assistance Center.

Positions 2003-2004

Position	Budgeted		
	Current	Actual Salary	Savings
Margaret Wilson (Office Tech)	\$48,920	\$0	\$48,920
Daniel Ruehle (Math)	\$37,500	\$33,500	\$4,000
Richard Steinhaus (Psych/Soc)	\$37,500	\$34,000	\$3,500
Nursing (vacant)	\$37,500	\$37,500	\$0
Shelly Murphy (Nursing)	\$41,425	\$36,314	\$5,111 (Replaced Karen Landers)
Jonna Lindsey-Marion (Nursing)	\$36,742	\$31,250	\$5,492 (Replaced Kim Webb)
Mary Jane Ward (B&T Dean)	\$67,060	\$55,500	\$11,560 (Replaced Steve Davis)
Steve Davis (July & vacation)	\$0	\$10,053	-\$10,053
Marilyn Dill	\$50,000	\$50,000	\$0 (New Director of Learning and Assessment)
John Young (Office Tech/Bus)	\$50,317	\$35,500	\$14,817 (Replaced Ernestine Moore)
Charlotte Schmitz (Math)	\$37,500	\$31,500	\$6,000
Susan Waters (English)	\$45,262	\$35,000	\$10,262 (Replaced Patricia Bowman)
Jennifer Cain (English)	\$49,067	\$32,000	\$17,067 (Replaced Sue Bennett)
Irma Maldonado (AVHS-Allied Health)	\$36,314	\$28,500	\$7,814 (Replaced Shelly Murphy)
Erin Rowland (PT AVHS-Cosmetology)	\$0	\$6,300	-\$6,300 (Increased enrollment)
Professor of Reading/Writing (new)	\$0	\$37,500	-\$37,500 (Increased enrollment)
Totals	\$575,107	\$494,417	\$80,690

Transitional Studies

Instructional Support and Student Service Programs (12 FTE):

- College preparatory reading, writing, math, freshman seminar and English as a Second Language (869 students, 2.5 FTE, 12 adjunct faculty)
 - 52 sections
- Retention Activities
 - Student Space tracking and follow-up software
 - Early Alert
- Learning Communities
 - Solutions in Life: Comp and Rhetoric, Art Appreciation.
 - Skills for Life: Developmental Reading, Review of English I, Freshman Seminar
 - Exploring Your Options: College Prep Reading, Intro to Psychology
 - Jumpstart to Success: Freshman Seminar, Reading Improvement, Intro to Psychology
- Learning Enrichment Laboratory (12,226 students/patrons)
 - 36 computers for internet access and class assignments
 - Materials for skills strengthening
 - Spanish/English Language tapes, computer software
 - Books/software for reading classes
 - Typewriter
 - CD Listening stations
 - TV/VCR stations for course related videos
 - Biology materials
 - Supplemental materials for classes
- Testing Center (16,414 students/patrons)
 - Professor's exams
 - Other university's tests
 - GED pre-tests
 - COMPASS assessments
 - Hobbs Police Department exams
 - TABE testing for Department of Labor
 - H.E.L.P. (Home Education Livelihood) summer youth program
 - Hobbs Fire Department exams
 - CDL (commercial driver's license) exams
 - Gave Prometric (comprehensive technology-based testing) 1/5/03-6/30/03
- Tutoring (419 students tutored, 85 tutors, 6,643 hours of tutoring)
 - All subjects
 - Special needs assistance: note takers, readers
- Adult Basic Education (658 students, 23 teachers)
 - Basic Reading
 - English Literacy
 - GED preparation (reading, writing, math)

- Citizenship
- GED Testing---Official Lea County Test Site (138 tested, 75% pass rate)
 - Once or twice each month—afternoon orientation the day before testing
 - Transcripts provided

(side note: 4 Lea County students achieved scores over 3,000 and are eligible to compete against other GED graduates in New Mexico for the GED National Awards for Outstanding Achievement.)

- Workforce Investment Act (80 students)
 - Student class attendance forms turned in every other Friday
 - Payroll forms computed and submitted to state Department of Labor
- Career Center (under direction of Counseling Office, but located in Transitional Studies area on second floor of library)
 - Interest Inventories
 - Learning Styles Inventory
 - College Source
 - CHOICES (Career information program)

Tutoring

SUBJECT	Hours for 2002 - 2003
A & P	365.5
Accounting	477
Biology	141.75
Art Appreciation	4.5
Business	29.5
Chemistry	448
Computers	411
English/Reading	377
ESL	871
Freshman Seminar	23
Government	60.75
History/Civil War	0
History I & II	0
Interpersonal Communication	21
Math	2,557.5
Nursing	84.5
Nutrition & Human Growth	114.75

Physics/Tech	73.5
Piano	0
Psychology	175.75
Public Speaking	16.5
Sociology	11.5
Spanish	81.5
Tutor Tapes	38.5
Welding	5.0
<hr/>	
TOTALS	6,775.05

Hours are actual – not duplicated for groups of students – 77 tutors could be duplication if a tutor tutored more than one semester.

\$40,889.89 spent on tutoring, note takers, and ESL lab & fringe benefits @ approximately \$6,500