

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

TAB	DESCRIPTION	ACTION
1	FY 2013 BUDGET GUIDELINES – Line Items	Motion to approve
FY 2012 APPROPRIATIONS		
2	a. Information - Institutions & Agencies b. College & Universities c. Community Colleges d. Professional-Technical Education e. Promise A Scholarship f. Promise B Scholarship g. Opportunity Scholarship	Motion to approve
3	UNIVERSITY OF UTAH SCHOOL OF MEDICINE CONTRACT	Motion to approve
4	AMENDMENT TO BOARD POLICY Section V.F. – Bonds or Other Indebtedness & Section V.K. – Construction Projects – First Reading	Motion to approve
5	BOISE STATE UNIVERSITY Enterprise System Roadmap Project	Information item
6	BOISE STATE UNIVERSITY OIT Equipment Purchase	Motion to approve
7	BOISE STATE UNIVERSITY Bronco Bookstore Lease	Motion to approve
8	UNIVERSITY of IDAHO McCall Outdoor Science School - Self-Support Fees	Motion to approve
9	UNIVERSITY of IDAHO Farmhouse Ground Lease	Motion to approve

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TAB	DESCRIPTION	ACTION
10	UNIVERSITY of IDAHO Railroad Land Exchange	Motion to approve
11	LEWIS-CLARK STATE COLLEGE Parking Easement	Motion to approve
12	LEWIS-CLARK STATE COLLEGE Elevator Replacement Project Loan	Motion to approve

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

Discussion of FY 2013 Budget Request Process (Line Items)

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures Policy, Section V.B.1.

BACKGROUND/ DISCUSSION

Board-approved budget requests for FY 2013 must be submitted to the executive and legislative branches [Division of Financial Management (DFM) and Legislative Services Office (LSO)] on September 1, 2011. To meet this deadline, the Board has established a process for developing agency and institutional requests that will be finalized at the June 2011 Board meeting. Budget requests are developed in two parts as directed by the DFM Budget Development Manual: maintenance of current operations (MCO) items and line items.

MCO requests are calculated using state budget guidelines and Board policy. The Board's budget request guidelines have historically focused upon the development of line item requests, capital budget requests, special one-time requests (if any), and the timeframe for presenting and approving these requests.

An MCO request includes funding for health insurance or other personnel cost increases (Change in Employee Compensation or CEC), inflationary increases for operating expenses (including utilities), and central state agency cost areas (Treasurer, Controller, etc.). These items are calculated using rates established by DFM. Other MCO items include external non-discretionary adjustments such as enrollment workload adjustment (EWA) and health education contract adjustments.

An MCO budget is considered the minimum to maintain operations while line items are funded for new or expanded programs, occupancy costs, and other initiatives deemed important by the Board, institution/agency, Legislature or governor.

The capital budget request is a separate process with funding provided by the Permanent Building Fund. Agencies and institutions seek funding for major maintenance projects and major capital projects through that process.

STAFF COMMENTS AND RECOMMENDATIONS

Under current economic conditions, it is estimated that state funding will continue to be austere. If this is the case, just a true MCO budget including health benefits, CEC, inflation, replacement capital and an enrollment workload adjustment would be significant. Nevertheless, staff recommends the following line items categories for the college and universities: unfunded EWA, ongoing funding for CAES (CAES was funded with one-time General Funds in FY 2012), biomedical research collaboration, occupancy costs, and strategic initiatives.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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No new state General Funds were provided for Opportunity scholarships for FY 2012. The only funding available for Opportunity Scholarships will be from the corpus and interest earnings. Staff recommends a line item request of \$1,000,000 in ongoing General Funds for scholarship awards.

The information included in the final budget request must include supporting documentation enough to enable the Board, Division of Financial Management, and the Legislative Budget Office to make an informed decision.

BOARD ACTION

A motion to direct the agencies and institutions to use the following categories in priority order to develop FY 2013 Line Item budget requests:

1. Unfunded Enrollment Workload Adjustment
2. Center for Advanced Energy Studies (CAES)
3. Biomedical Research Collaboration
4. Occupancy Costs
5. Strategic Initiative(s)
6. Opportunity Scholarship

Moved by_____ Seconded by_____ Carried Yes_____ No_____

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

FY 2012 Appropriation Information – Institutions and Agencies of the State Board of Education

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.
Various Legislative Appropriation Bills (tab 2a page 3)

BACKGROUND/ DISCUSSION

The 2011 Legislature has passed appropriation bills for the agencies and institutions of the Board. The amounts contained in legislative appropriations include various ongoing base reductions from FY 2011 and further reductions for FY 2012 for the Community Colleges and the College and Universities.

The table on tab 2a page 3 lists the FY 2012 appropriation bills related to the State Board of Education. As of agenda preparation time, most bills were pending signature by the Governor.

IMPACT

Appropriation bills provide spending authority for the agencies and institutions of the State Board of Education allowing them to offer programs and services to Idaho's citizens.

Due to the continuing economic downturn, no funding was provided for inflation, Enrollment Workload Adjustment (EWA), replacement capital, or occupancy.

The balance of the unfunded EWA is:

	<u>2011</u>	<u>2012 Change</u>	<u>2012</u>
Boise State University	\$5,931,800	\$4,379,300	\$10,311,100
Idaho State University	2,447,900	2,543,200	4,991,100
University of Idaho	0	815,300	815,300
Lewis-Clark State College	<u>215,700</u>	<u>728,000</u>	<u>943,700</u>
Total Unfunded EWA	\$8,595,400	\$8,465,800	\$17,061,200

Agencies of the Board

The Office of the State Board of Education (OSBE) was appropriated an ongoing FY 2011 supplemental to increase Proprietary School spending authority to address additional personnel needs and costs to conduct investigations and other expenses. General funds appropriated to OSBE include 1 FTP for a Charter School Commission Director (\$117,400) and 1 FTP for a Technology Program Manager (\$98,100). These increases were offset by a General Fund base budget reduction of \$118,900.

ATTACHMENTS

Attachment 1 – FY 2012 Appropriations List

Page 3

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

STAFF COMMENTS

Staff comments and recommendations are included for each specific institution and agency allocation.

BOARD ACTION

Motions are included for each specific institution and agency allocation.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

ATTACHMENT 1

State Board of Education
FY 2012 Appropriations of Interest to Institutions and Agencies

	General Fund	% Δ From FY 2011	Total Fund
College and Universities	\$209,828,300	(3.5%)	\$396,707,600
Agricultural Research & Extension	22,559,000	0.0%	22,609,000
Community Colleges	23,033,000	(3.9%)	23,633,000
Health Education Programs	10,000,900	0.4%	10,710,400
Special Programs	8,634,300	(0.6%)	10,353,000

Agencies

Office of the State Board of Education	2,108,900	4.1%	4,322,500
Professional-Technical Education	46,511,600	(2.2%)	56,896,100
Public Broadcasting System	1,377,000	(1.0%)	2,413,900
Vocational Rehabilitation, Division	6,795,200	(5.6%)	23,430,500
State Department of Education	7,246,300	10.5%	34,586,400

Statewide Issues

Permanent Building Fund	major capital projects; alteration and repair projects
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BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

FY 2012 College and Universities Appropriation Allocation

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Sections V.C.1.d. and V.S.
Senate Bill 1181

BACKGROUND/ DISCUSSION

The legislature appropriates to the State Board of Education and the Board of Regents monies for the general education programs at Boise State University, Idaho State University, University of Idaho, Lewis-Clark State College, and system-wide needs. The Board allocates the lump-sum appropriation to the four institutions based on legislative intent and Board Policy, Section V.S.

According to Board policy, the allocation is made in the following order: 1) each institution shall be allocated its prior year base; 2) funds for the Enrollment Workload Adjustment; 3) funds for new occupancy costs; 4) funding of special allocations; and 5) a general allocation based on proportionate share to total budget request.

IMPACT

This action allocates the FY 2012 College and Universities lump-sum appropriation to the institutions for general education programs, and system-wide needs. The funds allocated along with revenue generated from potential fee increases will establish the operating budgets for the general education program for FY 2012. The FY 2012 Allocation, shown on page 3, consists of the lump-sum appropriation.

ATTACHMENTS

Attachment 1 - C&U FY 2012 Appropriation Allocation	Page 3
Attachment 2 - Appropriation bill (S1181)	Page 5
Attachment 3 - Statement of Purpose/Fiscal Note	Page 7

STAFF COMMENTS

Staff recommends approval of the FY 2012 College and Universities allocation.

BOARD ACTION

I move to approve the allocation of the FY 2012 appropriation for Boise State University, Idaho State University, University of Idaho, Lewis-Clark State College, and system-wide needs, as presented on Page 3.

Moved by_____ Seconded by_____ Carried Yes_____ No_____

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FY 2012 College and University Allocation
Based on JFAC Motion
 March 15, 2011

1	Appropriation:	FY11 Appr	FY12 Appr	% Chge	Sys Needs:	FY11 Appr	FY12 Appr
2	General Educ Approp: SB 1181				HERC	<u>1,435,500</u>	<u>1,435,500</u>
3	General Account	217,510,800	209,828,300	-3.53%	Innovation	<u>1,151,100</u>	<u>942,600</u>
4	Endowment Funds	9,616,600	9,616,600	0.00%	Sys Nds	<u>140,000</u>	<u>140,000</u>
5	ARRA Funds	4,305,900	0				
6	Total Gen Acct & Endow Funds	<u>231,433,300</u>	<u>219,444,900</u>	-5.18%	Total	<u>2,726,600</u>	<u>2,518,100</u>
7	Student Fees/Misc Revenue	146,253,000	177,262,700	21.20%			
8	One-time Student Fees:						
9	Total Gen Educ Approp	<u>377,686,300</u>	<u>396,707,600</u>	5.04%			
10							
11							
12	Allocation:	B.S.U.	I.S.U.	U.I.	L.C.S.C.	SYS-WIDE	TOTAL
13	FY11 General Account	70,116,400	59,071,300	73,576,700	12,019,800	2,726,600	217,510,800
14	FY11 ARRA Funds (one-time)	1,381,100	1,173,500	1,513,100	238,200	0	4,305,900
15	FY11 Endowment Funds	0	2,121,500	6,164,400	1,330,700	0	9,616,600
16	Remove one-time ARRA funds	(1,381,100)	(1,173,500)	(1,513,100)	(238,200)	0	(4,305,900)
17	Base Rescission	0	0	0	0	0	0
18	Base Reduction	(2,844,200)	(2,399,500)	(2,985,300)	(486,200)	(208,500)	(8,923,700)
19	Restore Health Insurance Holiday	0	0	0	0	0	0
20	FY12 Budget Base	<u>67,272,200</u>	<u>58,793,300</u>	<u>76,755,800</u>	<u>12,864,300</u>	<u>2,518,100</u>	<u>218,203,700</u>
21	% Base Change	-5.91%	-5.73%	-5.54%	-5.33%	-7.65%	-5.72%
22							
23	Additional Funding for FY12:						
24	MCO Adjustments:						
25	Personnel Benefits	0	0	0	0		0
26	Inflation including Library B&P	0	0	0	0		0
27	Replacement Items: One-Time	0	0	0	0		0
28	CEC @ 1.0%	0	0	0	0		0
29	Nonstandard Adjustments:						
30	Risk Mgmt/Controller/Treasurer	(170,800)	(52,000)	(114,400)	(12,800)		(350,000)
31	External Nonstandard Adjustments:						
32	Enrollment Workload Adjustment	0	0	0	0		0
33	Line Items CAES one-time	530,400	530,400	530,400	0	0	1,591,200
34		0	0	0	0		0
35	Total Addl Funding	<u>359,600</u>	<u>478,400</u>	<u>416,000</u>	<u>(12,800)</u>	<u>0</u>	<u>1,241,200</u>
36							
37	FY12 Gen Acct & Endow Allocation	<u>67,631,800</u>	<u>59,271,700</u>	<u>77,171,800</u>	<u>12,851,500</u>	<u>2,518,100</u>	<u>219,444,900</u>
38	% Change From FY11 Adjusted Budget Base	0.53%	0.81%	0.54%	-0.10%	0.00%	0.57%
39	% Chge From FY11 Adjusted Budget Base less One-time	-0.25%	-0.09%	-0.15%	-0.10%	0.00%	-0.16%
40							
41	FY12 Estimated Student Fee Revenue	61,818,300	46,146,200	58,515,800	10,782,400	0	177,262,700
42							
43	FY12 Operating Budget	<u>129,450,100</u>	<u>105,417,900</u>	<u>135,687,600</u>	<u>23,633,900</u>	<u>2,518,100</u>	<u>396,707,600</u>
44							

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LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1181

BY FINANCE COMMITTEE

AN ACT

APPROPRIATING MONEYS TO THE STATE BOARD OF EDUCATION FOR COLLEGE AND UNIVERSITIES AND THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 2012; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; PROVIDING LEGISLATIVE INTENT; AND EXEMPTING APPROPRIATION FROM PROGRAM TRANSFER LIMITATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Board of Education and the Board of Regents of the University of Idaho, for college and universities, and the Office of the State Board of Education the following amounts to be expended according to the designated programs, from the listed funds for the period July 1, 2011, through June 30, 2012:

FOR:

I. BOISE STATE UNIVERSITY:

FROM:

General Fund	\$67,631,800
Unrestricted Fund	<u>61,818,300</u>
TOTAL	\$129,450,100

II. IDAHO STATE UNIVERSITY:

FROM:

General Fund	\$57,150,200
Charitable Institutions Endowment Income Fund	790,600
Normal School Endowment Income Fund	1,330,900
Unrestricted Fund	<u>46,146,200</u>
TOTAL	\$105,417,900

III. UNIVERSITY OF IDAHO:

FROM:

General Fund	\$71,007,400
Agricultural College Endowment Income Fund	850,800
Scientific School Endowment Income Fund	2,984,400
University Endowment Income Fund	2,329,200
Unrestricted Fund	<u>58,515,800</u>
TOTAL	\$135,687,600

1	IV. LEWIS-CLARK STATE COLLEGE:	
2	FROM:	
3	General Fund	\$11,520,800
4	Normal School Endowment Income Fund	1,330,700
5	Unrestricted Fund	<u>10,782,400</u>
6	TOTAL	\$23,633,900
7	V. SYSTEMWIDE:	
8	FROM:	
9	General Fund	\$2,518,100
10	GRAND TOTAL	\$396,707,600

11 SECTION 2. NON-GENERAL FUND REAPPROPRIATION AUTHORITY. There is hereby
 12 reappropriated to the State Board of Education for college and universities
 13 any unexpended and unencumbered balances of moneys categorized as dedicated
 14 funds and federal funds as appropriated for fiscal year 2011, to be used for
 15 nonrecurring expenditures, for the period July 1, 2011, through June 30,
 16 2012.

17 SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature that
 18 the amount appropriated from the General Fund in Section 1, Subsection V. of
 19 this act, shall be used in the following ways: (1) An amount not to exceed
 20 \$140,000 may be used by the Office of the State Board of Education for sys-
 21 temwide needs; (2) An amount not to exceed \$1,435,500 may be used for the mis-
 22 sion and goals of the Higher Education Research Council; and (3) An amount
 23 not to exceed \$942,600 may be used by the State Board of Education for in-
 24 structional projects designed to foster innovative learning approaches us-
 25 ing technology, to promote accountability and information transfer through-
 26 out the higher education system on a longitudinal basis, and to promote the
 27 Idaho Electronic Campus.

28 SECTION 4. EXEMPTIONS FROM PROGRAM TRANSFER LIMITATIONS. For fiscal
 29 year 2012, the State Board of Education for college and universities is
 30 hereby exempted from the provisions of Section 67-3511(2), Idaho Code, al-
 31 lowing unlimited transfers between programs, for all moneys appropriated
 32 to it for the period July 1, 2011, through June 30, 2012. Legislative ap-
 33 propriations shall not be transferred from one fund to another fund unless
 34 expressly approved by the Legislature.

STATEMENT OF PURPOSE

RS20640

This is the FY 2012 appropriation to the State Board of Education for College and Universities in the amount of \$396,707,600.

FISCAL NOTE

	FTP	Gen	Ded	Fed	Total
FY 2011 Original Appropriation	3,840.34	217,510,800	160,175,500	0	377,686,300
Reappropriation	0.00	0	54,432,300	0	54,432,300
FY 2011 Total Appropriation	3,840.34	217,510,800	214,607,800	0	432,118,600
Noncognizable Funds and Transfers	(21.71)	0	39,570,400	0	39,570,400
FY 2011 Estimated Expenditures	3,818.63	217,510,800	254,178,200	0	471,689,000
Removal of One-Time Expenditures	0.00	0	(67,298,900)	0	(67,298,900)
FY 2012 Base	3,818.63	217,510,800	186,879,300	0	404,390,100
Benefit Costs	0.00	0	0	0	0
Inflationary Adjustments	0.00	0	0	0	0
Replacement Items	0.00	0	0	0	0
Statewide Cost Allocation	0.00	(350,000)	0	0	(350,000)
Change in Employee Compensation	0.00	0	0	0	0
Nondiscretionary Adjustments	0.00	0	0	0	0
FY 2012 Program Maintenance	3,818.63	217,160,800	186,879,300	0	404,040,100
1. Occupancy Costs	0.00	0	0	0	0
2. Center Adv Energy Studies (CAES)	14.67	1,591,200	0	0	1,591,200
3. Biomedical Research Initiative	0.00	0	0	0	0
4. Enrollment Workload - Prior Year	0.00	0	0	0	0
5. Ph.D in Public Policy	0.00	0	0	0	0
6. Inflation on Library Collections	0.00	0	0	0	0
7. Program Enhancements	0.00	0	0	0	0
8. Technology Program Manager	0.00	0	0	0	0
Omnibus Decisions	0.00	(8,923,700)	0	0	(8,923,700)
FY 2012 Total	3,833.30	209,828,300	186,879,300	0	396,707,600
Chg from FY 2011 Orig Approp	(7.04)	(7,682,500)	26,703,800	0	19,021,300
% Chg from FY 2011 Orig Approp.	(0.2%)	(3.5%)	16.7%	0.0%	5.0%

Contact:**Name:** Paul Headlee**Office:** Budget and Policy Analysis**Phone:** (208) 334-4746

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BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

Community Colleges FY 2012 Appropriation Allocation

REFERENCE

June 2006 Board approved a process for distributing the FY 2007 State General Fund appropriation between North Idaho College (NIC) and the College of Southern Idaho (CSI)

APPLICABLE STATUTE, RULE, OR POLICY

Senate Bill 1180

BACKGROUND/ DISCUSSION

The Legislature makes an annual appropriation to the State Board of Education for community college support. In June, 2006, the Board approved the process for distributing the FY 2007 State General Fund appropriation between CSI and NIC. That process had a four year term from FY 2007 ending FY 2010. This process has been a total success in that academic student full-time equivalent (FTE) equity was met between the institutions in the FY 2009 distribution. Now that the term of the distribution process has ended, the community colleges agreed to use their current base allocation of the total appropriation going forward. Therefore, the FY 2011 and FY 2012 allocations include the FY 2010 allocation plus each college's respective share in any budget adjustments according to the normal budgeting process.

IMPACT

This action allocates the FY 2012 Community Colleges appropriation to the institutions. The funds allocated along with revenue generated from other non-appropriated sources will establish the operating budgets. The FY 2012 Allocation, shown on page 3, consists of the lump-sum appropriation.

ATTACHMENTS

Attachment 1 – FY 2012 CC Appropriations Allocation	Page 3
Attachment 2 – Appropriation bill (S1180)	Page 5
Attachment 3 – Statement of Purpose/Fiscal Note	Page 6

STAFF COMMENTS

Staff recommends approval of the FY 2012 Community College allocation.

BOARD ACTION

I move to approve the allocation of the FY 2012 appropriation for the College of Southern Idaho, North Idaho College, and College of Western Idaho, as presented on Page 3.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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**Idaho Community Colleges
FY 2012 Appropriation Allocation
15-Mar-11**

SB 1180

	CSI	NIC	CWI	Total
1 FY 11 Total Appropriation				
2 General Funds	10,658,200	9,097,400	4,211,200	23,966,800
3 ARRA Funds One-time	205,400	177,600	78,000	461,000
4 Dedicated Funds	200,000	200,000	200,000	600,000
5 Total FY11 Total Appropriation	11,063,600	9,475,000	4,489,200	25,027,800
6				
7 Remove O/T Exp. ARRA	(205,400)	(177,600)	(78,000)	(461,000)
8				
9 FY 12 Base				
10 General Funds	10,658,200	9,097,400	4,211,200	23,966,800
11 ARRA Funds	-	-	-	-
12 Dedicated Funds	200,000	200,000	200,000	600,000
13 Total FY 11 Base	10,858,200	9,297,400	4,411,200	24,566,800
14				
15 FY 12 Maintenance				
16 General Funds	10,658,200	9,097,400	4,211,200	23,966,800
17 Dedicated Funds	200,000	200,000	200,000	600,000
18 Total FY 11 Base	10,858,200	9,297,400	4,411,200	24,566,800
19				
20 FY 12 Line Items				
21 General Fund Reductions	(415,200)	(354,500)	(164,100)	(933,800)
22				
23 FY 12 Total Appropriation				
24 General Funds	10,243,000	8,742,900	4,047,100	23,033,000
25 Dedicated Funds	200,000	200,000	200,000	600,000
26 FY 11 Total Appropriation	10,443,000	8,942,900	4,247,100	23,633,000
27				
28				
29 GF Change from FY 11 Total	-3.9%	-3.9%	-3.9%	-3.9%

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LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1180

BY FINANCE COMMITTEE

AN ACT

APPROPRIATING MONEYS TO THE STATE BOARD OF EDUCATION FOR COMMUNITY COLLEGES
FOR FISCAL YEAR 2012; AND EXEMPTING PROGRAM TRANSFER LIMITATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the State Board of Education for community colleges, the following amounts to be expended according to the designated programs, from the listed funds for the period July 1, 2011, through June 30, 2012:

FOR:

I. COLLEGE OF SOUTHERN IDAHO:

FROM:

General Fund	\$10,243,000
Community College Fund	<u>200,000</u>
TOTAL	\$10,443,000

II. COLLEGE OF WESTERN IDAHO:

FROM:

General Fund	\$4,047,100
Community College Fund	<u>200,000</u>
TOTAL	\$4,247,100

III. NORTH IDAHO COLLEGE:

FROM:

General Fund	\$8,742,900
Community College Fund	<u>200,000</u>
TOTAL	\$8,942,900

GRAND TOTAL	\$23,633,000
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SECTION 2. EXEMPTIONS FROM PROGRAM TRANSFER LIMITATIONS. For fiscal year 2012, the State Board of Education for community colleges is hereby exempted from the provisions of Section 67-3511(2), Idaho Code, allowing unlimited transfers between programs, for all moneys appropriated to it for the period July 1, 2011, through June 30, 2012. Legislative appropriations shall not be transferred from one fund to another fund unless expressly approved by the Legislature.

STATEMENT OF PURPOSE

RS20642

This is the FY 2012 appropriation for Community Colleges in the amount of \$23,633,000

FISCAL NOTE

	FTP	Gen	Ded	Fed	Total
FY 2011 Original Appropriation	0.00	23,966,800	1,061,000	0	25,027,800
Reappropriation	0.00	0	300,500	0	300,500
Community Colleges					
1. CWI Enrollment Increase	0.00	0	0	0	0
Other Appropriation Adjustments	0.00	0	0	0	0
FY 2011 Total Appropriation	0.00	23,966,800	1,361,500	0	25,328,300
Noncognizable Funds and Transfers	0.00	0	0	0	0
FY 2011 Estimated Expenditures	0.00	23,966,800	1,361,500	0	25,328,300
Removal of One-Time Expenditures	0.00	0	(761,500)	0	(761,500)
Restore Health Insurance Funding	0.00	0	0	0	0
FY 2012 Base	0.00	23,966,800	600,000	0	24,566,800
Benefit Costs	0.00	0	0	0	0
Inflationary Adjustments	0.00	0	0	0	0
Change in Employee Compensation	0.00	0	0	0	0
Nondiscretionary Adjustments	0.00	0	0	0	0
FY 2012 Program Maintenance	0.00	23,966,800	600,000	0	24,566,800
Community Colleges					
1. Occupancy Costs - CSI and CWI	0.00	0	0	0	0
2. Enrollment Increase - CWI	0.00	0	0	0	0
3. Capacity Needs - NIC	0.00	0	0	0	0
4. Nursing Positions - CSI	0.00	0	0	0	0
Omnibus Decisions	0.00	(933,800)	0	0	(933,800)
Lump Sum or Other Adjustments	0.00	0	0	0	0
FY 2012 Total	0.00	23,033,000	600,000	0	23,633,000
Chg from FY 2011 Orig Approp	0.00	(933,800)	(461,000)	0	(1,394,800)
% Chg from FY 2011 Orig Approp.	0.0%	(3.9%)	(43.4%)	0.0%	(5.6%)

Contact:**Name:** Paul Headlee**Office:** Budget and Policy Analysis**Phone:** (208) 334-4746

SUBJECT

Allocation of the Division of Professional-Technical Education Appropriation.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.C.1.d.

BACKGROUND

The Idaho Legislature appropriates funds for Professional-Technical Education to the Division of Professional-Technical Education in five designated programs: State Leadership and Technical Assistance, General programs, Postsecondary Programs, Underprepared and Unprepared Adults/Displaced Homemakers, and Related Services. The Division of Professional-Technical Education requests approval of the allocation of the FY 2012 appropriated funds detailed in Attachment 1.

DISCUSSION

The allocation is based on the level of funding in Senate Bill No. 1168 and the Provisions of the State Plan for Professional-Technical Education. The postsecondary allocation is based on the Annual Plan and Budget Request from the respective technical colleges. The State General Fund reflects an overall decrease of 2.24% from the original FY 2011 appropriation. The Legislature funded maintenance level decreases in the statewide cost allocation for the Division of Professional-Technical Education and EITC.

IMPACT

Establish FY 2012 operating budget.

ATTACHMENTS

Attachment 1 - FY 2011 Appropriation Allocation	Page 3
Attachment 2 - Appropriation bill (S 1168)	Page 5
Attachment 3 - Statement of Purpose/Fiscal Note	Page 7

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval of the allocation of Division of Professional-Technical Education FY 2012 appropriation.

BOARD ACTION

I move to approve the request from the Division of Professional-Technical Education for the allocation of the FY 2012 appropriation detailed in Attachment 1.

Moved by _____ Seconded by _____ Yes ____ No ____

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DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION
Allocation of State Division of Professional-Technical Education
FY 2012 Appropriation

ATTACHMENT 1

	FY11 Allocation	FY12 Allocation
Program 01 (State Leadership and Technical Assistance)		
By Standard Class:		
Personnel Costs	\$ 1,827,700	\$ 1,793,900
Operating Expenses	386,900	376,800
Capital Outlay	0	0
Totals	\$ 2,214,600	\$ 2,170,700
By Source of Revenue:		
General Funds	1,864,000	1,820,100
One-time General Funds	0	0
Federal Funds	350,600	350,600
Totals	\$ 2,214,600	\$ 2,170,700
Program 02 (General Programs)		
By Major Program Area:		
Secondary Formula	\$ 10,008,769	\$ 10,008,769
Professional-Technical School Added Cost	2,434,400	2,434,400
General Programs Leadership	213,700	213,200
Special Programs		
Federal Leadership	700,671	700,671
Advanced Learning Partnership	420,000	420,000
Adult/Retraining	759,240	766,440
Support and Improvement Services	874,820	805,920
Totals	\$ 15,411,600	\$ 15,349,400
By Source of Revenue		
General Funds	\$ 10,555,000	\$ 10,492,800
One-time General Funds	0	0
Federal Funds	4,788,800	4,788,800
Dedicated Funds	67,800	67,800
Totals	\$ 15,411,600	\$ 15,349,400
Program 03 (Postsecondary Programs)		
By Technical College:		
College of Southern Idaho	5,370,556	5,273,756
College of Western Idaho	6,583,712	6,289,712
Eastern Idaho Technical College	5,683,820	5,642,720
Idaho State University	9,259,625	9,113,325
Lewis-Clark State College	3,642,478	3,584,978
North Idaho College	3,919,609	3,848,609
Totals	\$ 34,459,800	\$ 33,753,100
By Source of Revenue:		
General Funds	\$ 33,992,800	\$ 33,233,100
One-time General Funds	0	0
Unrestricted Funds	467,000	520,000
Totals	\$ 34,459,800	\$ 33,753,100

57	Allocation of State Division of Professional-Technical Education	ATTACHMENT 1	
58	FY 2012 Appropriation		
59		FY11	FY12
60		<u>Allocation</u>	<u>Allocation</u>
61			
62	Program 04 (Underprepared Adults/Displaced Homemaker Program)		
63			
64	By Major Program:		
65	Postsecondary Formula	\$ 1,975,700	\$ 1,975,700
66	Displaced Homemaker Program	<u>370,000</u>	<u>170,000</u>
67			
68	Totals	\$ 2,345,700	\$ 2,145,700
69			
70	By Source of Revenue:		
71	General Funds	\$ 200,000	\$ -
72	Federal Funds	1,975,700	1,975,700
73	Dedicated Funds	<u>170,000</u>	<u>170,000</u>
74	Totals	\$ 2,345,700	\$ 2,145,700
75			
76	Program 05 (Related Services)		
77			
78	By Standard Class:		
79	Personnel Costs	\$ 346,500	\$ 346,500
80	Operating Expenses	251,000	251,000
81	Trustee Payments	<u>2,879,700</u>	<u>2,879,700</u>
82	Totals	\$ 3,477,200	\$ 3,477,200
83			
84	By Source of Revenue:		
85	General Funds	965,600	965,600
86	One-Time General Funds	0	0
87	Federal Funds	2,136,800	2,136,800
88	Dedicated Funds	140,000	140,000
89	Miscellaneous Revenue	<u>234,800</u>	<u>234,800</u>
90	Totals	\$ 3,477,200	\$ 3,477,200
91			
92	By Source of Revenue:		
93	General Funds	\$ 47,577,400	\$ 46,511,600
94	One-time General Funds	0	0
95	Federal Funds	9,251,900	9,251,900
96	Dedicated Funds	377,800	377,800
97	Unrestricted Funds	467,000	520,000
98	Miscellaneous Revenue	<u>234,800</u>	<u>234,800</u>
99	Totals	\$ 57,908,900	\$ 56,896,100

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1168

BY FINANCE COMMITTEE

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION
FOR FISCAL YEAR 2012; AND REAPPROPRIATING CERTAIN UNEXPENDED AND UNEN-
CUMBERED BALANCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Division of Profes-
sional-Technical Education, the following amounts to be expended according
to the designated programs and expense classes, from the listed funds for the
period July 1, 2011, through June 30, 2012:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
I. STATE LEADERSHIP & TECHNICAL ASSISTANCE:					
FROM:					
General					
Fund	\$1,546,000	\$274,100			\$1,820,100
Federal Grant					
Fund	<u>247,900</u>	<u>102,700</u>			<u>350,600</u>
TOTAL	\$1,793,900	\$376,800			\$2,170,700
II. GENERAL PROGRAMS:					
FROM:					
General					
Fund	\$191,200	\$22,000	\$10,279,600		\$10,492,800
Hazardous Materials/Waste Enforcement					
Fund			67,800		67,800
Federal Grant					
Fund	<u>164,700</u>	<u>23,700</u>	<u>4,600,400</u>		<u>4,788,800</u>
TOTAL	\$355,900	\$45,700	\$14,947,800		\$15,349,400
III. POSTSECONDARY PROGRAMS:					
FROM:					
General					
Fund				\$33,233,100	\$33,233,100

	FOR	FOR	FOR	FOR	
	PERSONNEL	OPERATING	TRUSTEE AND	LUMP	
	COSTS	EXPENDITURES	BENEFIT	SUM	TOTAL
			PAYMENTS		
Unrestricted					
Fund				<u>520,000</u>	<u>520,000</u>
TOTAL				\$33,753,100	\$33,753,100
IV. UNDERPREPARED ADULTS/DISPLACED HOME MAKERS:					
FROM:					
Displaced Homemaker					
Fund			\$170,000		\$170,000
Federal Grant					
Fund			<u>1,975,700</u>		<u>1,975,700</u>
TOTAL			\$2,145,700		\$2,145,700
V. RELATED SERVICES:					
FROM:					
General					
Fund	\$114,000	\$10,700	\$840,900		\$965,600
Miscellaneous Revenue					
Fund	188,300	46,500			234,800
Seminars and Publications					
Fund		140,000			140,000
Federal Grant					
Fund	<u>44,200</u>	<u>53,800</u>	<u>2,038,800</u>		<u>2,136,800</u>
TOTAL	\$346,500	\$251,000	\$2,879,700		\$3,477,200
GRAND TOTAL	\$2,496,300	\$673,500	\$19,973,200	\$33,753,100	\$56,896,100

SECTION 2. NON-GENERAL FUND REAPPROPRIATION AUTHORITY. There is hereby reappropriated to the State Board of Education for the Division of Professional-Technical Education any unexpended and unencumbered balances of moneys categorized as dedicated funds and federal funds as appropriated for fiscal year 2011, to be used for nonrecurring expenditures, for the period July 1, 2011, through June 30, 2012.

STATEMENT OF PURPOSE

RS20620

This is the FY 2012 appropriation to Professional-Technical Education.

FISCAL NOTE

	FTP	Gen	Ded	Fed	Total
FY 2011 Original Appropriation	533.91	47,577,400	1,079,600	9,251,900	57,908,900
Reappropriation	0.00	0	280,600	341,200	621,800
FY 2011 Total Appropriation	533.91	47,577,400	1,360,200	9,593,100	58,530,700
Noncognizable Funds and Transfers	(12.72)	0	0	0	0
FY 2011 Estimated Expenditures	521.19	47,577,400	1,360,200	9,593,100	58,530,700
Removal of One-Time Expenditures	0.00	0	(280,600)	(341,200)	(621,800)
Base Adjustments	0.00	0	53,000	0	53,000
Restore Health Insurance Funding	0.00	0	0	0	0
FY 2012 Base	521.19	47,577,400	1,132,600	9,251,900	57,961,900
Benefit Costs	0.00	0	0	0	0
Inflationary Adjustments	0.00	0	0	0	0
Replacement Items	0.00	0	0	0	0
Statewide Cost Allocation	0.00	(14,700)	0	0	(14,700)
Change in Employee Compensation	0.00	0	0	0	0
Nondiscretionary Adjustments	0.00	0	0	0	0
FY 2012 Program Maintenance	521.19	47,562,700	1,132,600	9,251,900	57,947,200
Division of Professional-Technical Education					
1. Increased Enrollment Cost Adjustment	0.00	0	0	0	0
Omnibus Decisions	0.00	(1,051,100)	0	0	(1,051,100)
Lump Sum or Other Adjustments	0.00	0	0	0	0
FY 2012 Total	521.19	46,511,600	1,132,600	9,251,900	56,896,100
Chg from FY 2011 Orig Approp	(12.72)	(1,065,800)	53,000	0	(1,012,800)
% Chg from FY 2011 Orig Approp.	(2.4%)	(2.2%)	4.9%	0.0%	(1.7%)

Contact:

Name: Paul Headlee

Office: Budget and Policy Analysis

Phone: (208) 334-4746

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BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

Idaho Robert R. Lee Promise Scholarship – Approve Category A Award.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Code §§ 33-4305(2), 33-4307(2)(a)

Idaho Administrative Procedures Act (IDAPA) 08.01.05

BACKGROUND/DISCUSSION

The intent of the Idaho Robert R. Lee Promise Scholarship Category A award is to encourage the best and brightest Idaho students to attend an Idaho college or university. Applicants are ranked based on academic and professional-technical high school records, and ACT or COMPASS scores. The provisions of Idaho Code §33-4307(2)(a), require the State Board of Education to annually set the amount of the award. The amount of the award has been \$3,000 per year (\$1,500 per semester) since the fall 2001 semester.

The FY 2012 appropriation will fund approximately 105 total scholarships. Seventy five percent of the new scholarships are awarded to students pursuing academic programs and twenty five percent are awarded to professional-technical students.

IMPACT

The Joint Finance and Appropriations Committee (JFAC) approves scholarships and grants funding at an aggregate level. The Office of the State Board of Education (OSBE), as the administering agency, then allocates the funding among the scholarships and grants. The Category A Scholarship Program will have \$317,048 for the 2011-2012 academic year.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval of the Promise Category A scholarship in the amount of \$3,000 per year (\$1,500 per semester).

BOARD ACTION

A motion to approve the amount of the Idaho Promise Scholarship, Category A, at \$3,000 per year (\$1,500 per semester) for those applicants who are selected to receive or renew the Idaho Robert R. Lee Promise Category A scholarship for the 2011-2012 academic year.

Moved by_____ Seconded by_____ Carried Yes_____ No_____

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BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

Idaho Promise Scholarship – Approve Category B Award.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Code §§ 33-4305 and 33-4308

Idaho Administrative Procedures Act (IDAPA) 08.01.05

BACKGROUND/ DISCUSSION

The Idaho Promise Scholarship Category B award is available for all Idaho students attending college for the first time and who have a high school grade point average of at least 3.0 or an ACT score of 20 or above. This scholarship is limited to two years and to students younger than 22 years of age. Students must maintain at least a 2.5 GPA while taking an average of 12 credits to remain eligible for the scholarship. State law requires the State Board of Education to annually set the amount of the award based on the legislative appropriation and the number of eligible students.

Statute permits the State Board of Education to set the annual individual amount up to \$600 and the total award up to \$1,200. If actual awards are different than projected for the fall 2011 semester, the Board may choose to increase or decrease the amount of the award for the spring 2012 semester.

The FY 2012 legislative appropriation will provide \$3,634,525 for the Promise Category B Scholarship. Based upon participation during FY 2011, Board staff has estimated the number of eligible students in academic year 2011-2012 to be approximately 8,700 students. With the award set at \$400 per student per year, the total amount awarded to all eligible students would be \$3,480,000.

IMPACT

The Idaho Promise Scholarship Category B provides a merit-based scholarship to Idaho high school students in an attempt to motivate students to excel in high school and attend an Idaho college. Estimated number of students receiving scholarships is 8,700.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval of the Promise Category B scholarship in the amount of \$200 per semester (\$400 annually).

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOARD ACTION

A motion to approve the amount of the Idaho Promise Scholarship, Category B, at \$200 per semester per student (\$400 annually) for those current recipients who maintain eligibility and for qualified first-year entering students under the age of 22 in academic year 2011-2012, and to delegate to the Executive Director the authority to approve adjustments to the amount as necessary resulting from any enrollment changes or holdbacks that may be ordered by the Governor during FY 2012.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

FY 2012 Idaho Opportunity Scholarship

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Code § 33-5605

IDAPA 08.01.13.010.01 and 08.01.13.300.02.a

BACKGROUND/ DISCUSSION

The intent of the Idaho Opportunity Scholarship is to provide financial resources to Idaho students who are economically disadvantaged, to close the gap between the estimated cost of attending an eligible Idaho institution of higher education and the expected student and family contribution toward such educational costs, and to encourage the educational development of such students in eligible Idaho postsecondary educational institutions. Provisions of the rules governing this scholarship program require that the State Board of Education annually establish the maximum amount of the award, the cost of attendance for purposes of this award determination, and the amount of the expected family contribution. Authorized administrative costs up to a maximum of 5% (not to exceed \$75,000) are permitted and must come from this same funding source.

In fiscal years 2008 and 2009, the Legislature appropriated a total of \$20M to fund an endowment for this scholarship program. In addition, during those same years JFAC appropriated \$1,925,000 for fund current year awards. The corpus and interest earnings from the Opportunity Scholarship Account were used during FY 2010 and FY 2011 to help fund the Opportunity Scholarship program.

The maximum award amount for FY 2011 was \$3,000 per year (\$1,500 per semester); the expected family contribution for FY 2011 was \$5,000; and the standard cost of attendance for award determination purposes was \$16,500 for the FY 2011 award year. Staff only awarded 126 renewals for FY 2011 in the amount of \$262,000 in order to maintain the integrity of the fund for future years.

Staff recommends maintaining the maximum award amount set for the FY 2012 academic year at \$3,000. The majority of full-year student recipients were eligible for the maximum \$3,000 award. The scholarship methodology provides "last dollars." Using this model, not all students will receive full awards.

The Board is responsible for setting the cost of attendance (COA) which is used in the formula to determine the amount of a student's award and the maximum amount of the scholarship award.

For purposes of the formula, the staff recommendation is to use a maximum of \$16,500 as the COA to determine scholarship awards. This was the same amount used for the previous two years, and due to funding limitations, staff is not requesting an adjustment for the 2012 award cycle.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

Eligible students are expected to share in the cost of their education and will be required to contribute an amount determined by the Board. Board staff recommends that the amount of the student contribution remain at \$5,000 for FY 2012. Additionally, it is recommended that the Board accept student-initiated scholarships and gifts from non-federal and non-institutional sources as part of the student contribution.

IMPACT

No new state General Funds were provided for Opportunity scholarships for FY 2012. The only funding available for Opportunity Scholarships will be from the corpus and interest earnings. Staff estimates approximately \$170,000 in interest will be available to fund scholarships for FY 2012. The majority of this will be used to fund renewal awards. Funds from the corpus will be used to fund new awards and renewals not funded by the interest earnings. It is estimated that we will be able to award renewal scholarships for all returning students.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval of the Opportunity Scholarship in the amount of \$3,000 per year (\$1,500 per semester).

Staff recommends the annual Cost of Attendance for the Opportunity scholarship award formula to be set at \$16,500.

Staff recommends that the student contribution be set at \$5,000, and to accept student-initiated scholarships and non-institutional and non-federal aid as part of the student contribution.

Staff further recommends that in cases where further clarification is needed to determine whether aid counts towards the student responsibility the Board delegate to the Executive Director or his designee authority to make these determinations on behalf of the Board.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOARD ACTION

I move to approve the maximum amount of the Idaho Opportunity Scholarship, to be \$3,000 per year (\$1,500/semester) for those applicants who are selected to receive or renew the Idaho Opportunity Scholarship for the Fiscal Year July 1, 2011-June 30, 2012.

Moved by_____ Seconded by_____ Carried Yes_____ No_____

I move to set the Cost of Attendance to be used in the formula that determines the award for the Opportunity Scholarship at a maximum of \$16,500 for the the Fiscal Year July 1, 2011-June 30, 2012.

Moved by_____ Seconded by_____ Carried Yes_____ No_____

I move to approve the student contribution for the Fiscal Year July 1, 2001-June 30, 2012 at \$5,000, and to accept student-initiated scholarships and non-institutional and non-federal aid as part of the student contribution. In cases where further clarification is needed to determine whether aid counts towards the student responsibility, the Board delegates to the Executive Director or his designee authority to make these determinations on its behalf.

Moved by_____ Seconded by_____ Carried Yes_____ No_____

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BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

Renewal of University of Utah School of Medicine (UUSOM) Contract

APPLICABLE STATUTES, RULE OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.3.(a)

BACKGROUND / DISCUSSION

Since July 1976, the State Board of Education has held an agreement with the UUSOM to reserve a specific number of seats for Idaho residents at the in-state tuition and fee rate established by UUSOM for residents of Utah. The Board makes annual fee payments in support of such Idaho resident students enrolled under this agreement. The cooperative agreement benefits both parties in reducing costs and improving other benefits. The current agreement expires at the conclusion of the 2010-2011 academic year.

Each academic year, the UUSOM reserves eight new positions in its entering class pursuant to this Agreement for Idaho resident students seeking an M.D. degree. The regular course of instruction to receive an M.D. degree at UUSOM is four years. Therefore, currently 32 students are enrolled at UUSOM at any time during each academic year.

The total annual support fee that the Board agrees to pay UUSOM for each Idaho resident student enrolled at UUSOM under this agreement for the 2011-12 academic year is \$37,605. Thereafter, the annual support fee for each Idaho resident student shall increase by the Higher Education Cost Adjustment (HECA) index. The index used shall be the published HECA Index for the year preceding the academic year.

The Office of the State Board of Education and the UUSOM have reviewed and revised the contract, which is effective for a period of three years ending with the 2013-2014 academic year. Material changes include:

Section 1(a) includes a provision that student applicants to UUSOM and WWAMI only need to submit one Idaho Residency Determination Worksheet to either ISU or UI. UI automatically provides residency certifications to UUSOM.

Section 2(b) of the agreement provides that UUSOM designate at least two Idaho licensed physicians approved by the Board to serve on the School's Admissions Selection Committee

Section 4 codifies current UUSOM practice of encouraging Idaho sponsored students to participate in shadowing Idaho physicians after the first year of school and offering electives during the fourth year.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

Section 5 further clarifies that should the Idaho Legislature appropriate insufficient funds to meet the total amount due to the School for an academic year, each Idaho student remaining in the program would be responsible for the difference between the annual support fee and the per student appropriation. For academic years 2010-11 and 2011-12, Idaho sponsored student will be assessed an additional surcharge by UUSOM due to a shortfall in the appropriation for the annual support fee.

Section 6(a) changes the annual support fee inflation factor from 120% of the Consumer Price Index (CPI) to a straight Higher Education Cost Adjustment (HECA) index rate. This change should not have a material impact.

Section 6(b) clarifies that when an Idaho sponsored student is on an approved leave of absence, the annual support fee shall be held by UUSOM in an escrow account until the student returns.

IMPACT

Renewal of the contract will continue to provide a cost-effective way for Idaho students to attend medical school.

ATTACHMENTS

Attachment 1 – University of Utah Medical Contract	Page 3
Attachment 2 – University of Utah Medical Contract-Redline Version	Page 9

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval.

BOARD ACTION

I move to approve the three-year contract between the University of Utah School of Medicine and the State Board of Education as submitted, and to authorize the Executive Director of the State Board of Education to execute the contract on behalf of the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**FOR THE PROVISION OF MEDICAL SCHOOL OPPORTUNITIES
TO RESIDENTS OF THE STATE OF IDAHO**

This Agreement ("Agreement") is executed this ____ day of _____, 2011, between the University of Utah, on behalf of its School of Medicine, located in Salt Lake City, Utah (hereinafter referred to as the "School"), and the Idaho State Board of Education, located in Boise, Idaho, on behalf of the state of Idaho (hereinafter referred to as "SBOE").

WHEREAS, the School has an established, fully accredited, four-year M.D. degree granting School of Medicine, and no such degree is offered by an Idaho public higher education institution; and

WHEREAS, the parties hereto wish to enter into a cooperative program under which the School will reserve for qualified Idaho resident students positions in the School at the in-state tuition and fee rate established by the School for residents of the state of Utah, and SBOE will make annual support fee payments in support of such Idaho resident students enrolled pursuant to this Agreement, which cooperative program will benefit both parties in reducing costs, and will improve other benefits to both parties; and

WHEREAS, the School is dedicated to the improvement of health care delivery in the Intermountain region, which includes the states of Utah and Idaho; and

WHEREAS, the parties hereto anticipate that this cooperative program will result in significant progress in improving health care delivery, especially rural health care, in the Intermountain region.

NOW THEREFORE, it is mutually agreed as follows:

1. Positions Reserved for Idaho Resident Students.

(a) Each academic year upon agreement of both parties, the School will reserve eight (8) new positions in its entering class pursuant to this Agreement for Idaho resident students seeking an M.D. degree. The SBOE will determine the eligibility of Idaho resident students who wish to participate in the cooperative program covered by this Agreement, however Idaho students applying to the joint MD/PhD program at the School shall not be eligible to participate under this cooperative program. The SBOE delegates to Idaho State University (ISU), located in Pocatello, Idaho, the responsibility of designating those students who meet Idaho residency criteria and who are eligible to receive the benefits of this Agreement, except that applicants to the School who also apply to the University of Washington School of Medicine only will be required to submit an Idaho Residency Determination Worksheet to certify residency through one institution (either ISU or the University of Idaho (UI), located in Moscow, Idaho). UI automatically provides certifications for verification to the School. The regular course of instruction to receive an M.D. degree at the School is four (4) years.

(b) If an Idaho resident enrolled at the School pursuant to this Agreement permanently withdraws or is dismissed prior to completion of the M.D. degree, then the next academic year the School may accept another eligible Idaho resident student who is currently enrolled in the School's program in consultation with the SBOE. In such event, an Idaho resident student shall assume the vacant position of the Idaho resident student who has withdrawn or was dismissed. However, such student shall only receive the benefits of this Agreement for the remaining years of eligibility for the Idaho resident student who withdrew or was dismissed prior to completion of the M.D. degree.

(c) An Idaho resident enrolled at the School pursuant to this Agreement may request a leave of absence with the approval of both the School and SBOE, which will generally be granted for purposes such as participating in an academic program intended to further such student's training in the field of medicine, or for cases of significant hardship and to the extent such leave is otherwise consistent with the practices and policies of the School. In such event, an Idaho resident student shall not be permitted to assume the temporary vacant position of the Idaho resident student on leave of absence, without the approval of the SBOE. At no time will any student be sponsored by the SBOE for more than a total of four (4) years.

(d) Unless the student withdraws or is dismissed as contemplated in paragraph 1(b) above, each Idaho resident student enrolled at the School under this cooperative program (including a student on leave of absence pursuant to paragraph 1(c) above) shall be permitted to continue at the School until such student has finished the regular course of instruction required to receive the M.D. degree (i.e.: four (4) years of academic instruction); notwithstanding, funding for such student under this Agreement is subject to the limitations described in Section 7 of this Agreement and the student's obligations with respect to the payment of tuition as described at Section 5 of this Agreement. The regular course of instruction may be increased or decreased for a particular student on a case by case basis as agreed upon by the School and SBOE. At no time will any student be sponsored by the SBOE for more than a total of four (4) years.

(e) An Idaho resident student who is offered and accepts a reserved position shall, from that point forward in such student's course of instruction at the School, be considered a resident of Idaho, notwithstanding establishment of legal residence in the state of Utah.

(f) Except as otherwise permitted by this Agreement, the number of positions reserved each year may be increased or decreased only by mutual written consent of both parties to this Agreement.

2. Admission Requirements.

(a) All Idaho resident students designated as eligible for benefits under this Agreement must apply for admission to the School in accordance with the regular admission procedures of the School, which includes the application process of the American

Medical College Application Service, and the screening criteria and interview procedures developed by the School.

(b) The School agrees to designate at least two Idaho licensed physicians approved by SBOE to serve on the School's Admissions Selection Committee for the purpose of assisting in the selection of the Idaho resident students to be admitted pursuant to this Agreement. The Assistant Dean for Idaho Affairs will also serve as a member of such Admissions Selection Committee. The Idaho licensed physicians will also participate as full voting members in selection deliberations involving Idaho resident student applicants. Idaho physicians may participate by teleconference but if they attend in person, then the SBOE will be responsible for all SBOE pre-approved travel expenses related to the Idaho licensed physicians serving on the Admissions Committee, in accordance with Idaho State Board of Examiner's travel policies. The Dean of the School, or his designee, shall have final authority over the acceptance or rejection of Idaho student applicants.

3. Rules and Regulations. Except as otherwise expressly provided for in this Agreement, Idaho resident students holding reserved positions shall be subject to the same academic, disciplinary, and other rules, regulations, requirements, and privileges that are applicable to all other students in the School.

4. Clinical Rotations in Idaho. The School will encourage Idaho sponsored students to participate in shadowing Idaho physicians after the first year of school and will offer electives during the senior year of school. As part of the regular course of instruction for an M.D. degree, students participate in ambulatory clinical rotations during the third year of training. The parties agree that the Idaho resident students enrolled pursuant to the cooperative program covered by this Agreement shall serve such ambulatory clinical rotations at facilities in the state of Idaho, to the extent such opportunities are reasonably available. Upon a showing of hardship by the Idaho resident student, this requirement that an ambulatory clinical rotation occur at a facility in the state of Idaho may be waived by the SBOE. The coordination of such ambulatory clinical rotations shall be the responsibility of the School. The School shall report annually to the SBOE on the status of student rotations in the state of Idaho.

5. Tuition. Idaho resident students who are enrolled under the provisions of this Agreement shall be assessed the tuition and fees established for Utah resident students. In addition, Idaho resident students may be assessed any additional tuition and fees that may be required by law, required by SBOE, or are otherwise necessary to cover any shortfall between the Annual Support Fee (as defined below) and the tuition and fees established for non-resident students.

6. Annual Support Fee and Payments.

(a) The total annual support fee that SBOE agrees to pay the School for each Idaho resident student enrolled in the School under this cooperative program for the 2011-12 academic year shall be \$37,600 per Idaho resident student which is the amount appropriated by the State of Idaho (the "Annual Support Fee"). Thereafter, the parties agree that the Annual Support Fee for each Idaho resident student shall increase by an amount which is equal to the increase in the Higher Education Cost Adjustment (HECA) index. The index used shall be the published HECA index for the most recently available year preceding the academic year.

(b) The SBOE's annual support fee obligation each academic year shall be for Idaho resident students enrolled in the cooperative program. The annual support fee for any student(s) on a leave of absence pursuant to Section 1(c) of this Agreement shall be placed in an escrow account by the School to be used upon a student's return to the School. If a student does not return to the School, moneys in the escrow account will be returned to the State of Idaho through the SBOE consistent with the terms of Section 8 of this Agreement.

(c) The SBOE agrees to make the annual support fee payment to the School within thirty (30) days after receiving from the School the annual support fee statement, which details the Idaho resident students enrolled under this Agreement.

(d) SBOE's payment obligation for each Idaho resident student enrolled in the School pursuant to this Agreement will continue for the length of enrollment of each Idaho resident student in the School. The receipt of any scholarship by an Idaho resident student, including any federal scholarship, will not reduce the SBOE's obligation under this Agreement.

(e) The School agrees to collect the incentive fee assessed by SBOE pursuant to Idaho Code §33-3723, establishing the Idaho Rural Physician Incentive Program. Each academic year SBOE will notify the School of the amount to be collected from each Idaho resident student enrolled pursuant to this cooperative program for that school year. The School will collect the fee from all Idaho sponsored students, and promptly transfer such funds to SBOE.

7. Legislative Appropriation.

(a) SBOE agrees that it will include support obligations which it anticipates will become due as a result of this Agreement in each budget submitted to the Idaho Legislature, and will use good faith efforts to secure appropriations to meet such anticipated obligations. However, if the Idaho Legislature fails to appropriate an amount of money sufficient to meet the total amount due to the School for an academic year, then SBOE will not be obligated for support fee payments beyond the funds appropriated. If the Idaho Legislature appropriates an amount

of money insufficient to meet the total amount due to the School for an academic year, then each Idaho resident student who determines to remain in the program shall be responsible for the difference between the annual support fee and the per student appropriation.

- (b) If the Idaho Legislature fails to make any appropriation or otherwise determines to discontinue Idaho's participation in this cooperative program, then in such event the School will not be obligated to reserve any positions in future entering classes, and the School agrees to permit each Idaho resident student enrolled under this Agreement to continue in the course of instruction leading to the M.D. degree, so long as a satisfactory academic record is maintained and the Idaho resident student pays the applicable tuition and fees. Under these circumstances, the School will have the right to charge each Idaho resident student the tuition and fees established for non-resident students.

8. Refunding of Annual Support Fee. In the event an Idaho resident student enrolled pursuant to this Agreement is terminated during an academic year for any reason, then the School will refund to SBOE the annual support fee payment made on behalf of such student, subject to the same rules and regulations as apply generally to the refund of tuition and fees to medical students enrolled in the School that terminate their course of study during an academic year.

9. Information to SBOE. The School will submit an annual report to SBOE on or before August 31 of each year of this Agreement, which shall include the names of students accepted for the upcoming school year, and a report on the academic progress of continuing students enrolled under this Agreement. From time to time, as information is necessary for the successful operation of this cooperative program, the School will, upon reasonable request, make additional reports to the SBOE. Such information is limited to that permitted to be disclosed by the School to the SBOE under the Family Education Rights and Privacy Act, 20 U.S.C.A. § 1232g, as amended.

10. Term and Termination. The effective date of this Agreement shall coincide with the beginning of the 2011-2012 academic year of the School, and will expire at the conclusion of the 2013-2014 academic year of the School. Notwithstanding, this Agreement may be terminated by either party prior to the expiration date for any reason upon 30 days written notice to the other party. The parties agree that the expiration or termination of this Agreement shall not affect: (a) the School's obligation with respect to Idaho resident students enrolled under this Agreement at the time of expiration or termination who have not finished their course of study, and (b) SBOE's support fee obligation with respect to Idaho resident students enrolled under this Agreement at the time of expiration or termination who have not finished their course of study, unless such students withdraw or are dismissed as discussed in Section 1(b) hereinabove. This Agreement may not be modified or amended except by a written instrument executed by both parties. If full payment by the SBOE is not made by the due date for such payment, then the Agreement may be terminated immediately, except as it applies to individual Idaho resident students currently enrolled at the School at the time of such termination.

11. Notice. All notices and other communications shall be addressed as follows:

Idaho State Board of Education

Dr. Mike Rush
Executive Director
Office of the State Board of Education
PO Box 83720
Boise, ID 83720-0037

University of Utah

Dr. A. Lorris Betz
Senior Vice President for Health Sciences
University of Utah School of Medicine
50 North Medical Drive
Salt Lake City, UT 84132-0001

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement on this ____ day of _____, 2011.

IDAHO STATE BOARD OF EDUCATION

UNIVERSITY OF UTAH

Executive Director
Idaho State Board of Education

Senior Vice President for Health
Sciences
University of Utah

**FOR THE PROVISION OF MEDICAL SCHOOL OPPORTUNITIES
TO RESIDENTS OF THE STATE OF IDAHO**

This Agreement ("Agreement") is executed this ____ day of _____, 2011~~08~~⁰⁸, between the University of Utah, on behalf of its School of Medicine, located in Salt Lake City, Utah (hereinafter referred to as the "School"), and the Idaho State Board of Education, located in Boise, Idaho, on behalf of the state of Idaho (hereinafter referred to as "SBOE").

WHEREAS, the School has an established, fully accredited, four-year M.D. degree granting School of Medicine, and no such degree is offered by an Idaho public higher education institution; and

WHEREAS, the parties hereto wish to enter into a cooperative program under which the School will reserve for qualified Idaho resident students positions in the School at the in-state tuition and fee rate established by the School for residents of the state of Utah, and SBOE will make annual support fee payments in support of such Idaho resident students enrolled pursuant to this Agreement, which cooperative program will benefit both parties in reducing costs, and will improve other benefits to both parties; and

WHEREAS, the School is dedicated to the improvement of health care delivery in the Intermountain region, which includes the states of Utah and Idaho; and

WHEREAS, the parties hereto anticipate that this cooperative program will result in significant progress in improving health care delivery, especially rural health care, in the Intermountain region;

NOW THEREFORE, it is mutually agreed as follows:

1. Positions Reserved for Idaho Resident Students.

(a) Each academic year upon agreement of both parties, the School will reserve ~~a minimum of~~ eight (8) new positions, ~~and up to twelve (12) new positions~~, in its entering class pursuant to this Agreement for Idaho resident students seeking an M.D. degree. The SBOE will determine the eligibility of Idaho resident students who wish to participate in the cooperative program covered by this Agreement, however, Idaho students applying to the joint MD/PhD program at the School shall not be eligible to participate under this cooperative program. ~~and hereby~~ The SBOE delegates to Idaho State University (ISU), located in Pocatello, Idaho, the responsibility of designating those students who meet Idaho residency criteria and who are eligible to receive the benefits of this Agreement, except that ~~Applicants to the School both University of Utah who also apply to the~~ and University of Washington School of Medicine only will be required ~~need~~ to submit an Idaho Residency Determination Worksheet to certify residency through one institution (either ISU or the University of Idaho (UI), located in Moscow, Idaho). UI automatically provides certifications for

verification to the School. The regular course of instruction to receive an M.D. degree at the School is four (4) years.

(b) If an Idaho resident enrolled at the School pursuant to this Agreement permanently withdraws or is dismissed prior to completion of the M.D. degree, then the next academic year the School may accept another eligible Idaho resident student who is currently enrolled in the School's program in consultation with the SBOE. In such event, an Idaho resident student shall assume the vacant position of the Idaho resident student who has withdrawn or was dismissed. However, such student shall only receive the benefits of this Agreement for the remaining years of eligibility for the Idaho resident student who withdrew or was dismissed prior to completion of the M.D. degree.

(c) An Idaho resident enrolled at the School pursuant to this Agreement may request a leave of absence with the approval of both the School and SBOE, which will generally be granted for purposes such as participating in an academic program intended to further such student's training in the field of medicine, or for cases of significant hardship and to the extent such leave is otherwise consistent with the practices and policies of the School. In such event, an Idaho resident student shall not be permitted to assume the temporary vacant position of the Idaho resident student on leave of absence, without the approval of the SBOE. ~~The funding otherwise available for a student on an approved leave of absence will be made available by the SBOE for the benefit of such student for the remaining years of medical training at the School when the student returns to full academic status; however, the SBOE shall not be responsible for any increases in the annual support fee.~~ At no time will any student be sponsored by the SBOE for more than a total of four (4) years.

(d) Unless the student withdraws or is dismissed as contemplated in paragraph 1(b) above, each Idaho resident student enrolled at the School under this cooperative program (including a student on leave of absence pursuant to paragraph 1(c) above) shall be permitted to continue at the School until such student has finished the regular course of instruction required to receive the M.D. degree (i.e.: four (4) years of academic instruction); notwithstanding, funding for such student under this Agreement is subject to the limitations described in Section 7 and the student's obligations with respect to the payment of tuition as described at Section 5 of this Agreement. The regular course of instruction may be increased or decreased for a particular student on a case by case basis as agreed upon by the School and SBOE. At no time will any student be sponsored by the SBOE for more than a total of four (4) years.

(e) An Idaho resident student who is offered and accepts a reserved position shall, from that point forward in such student's course of instruction at the School, be considered a resident of Idaho, notwithstanding establishment of legal residence in the state of Utah.

(f) Except as otherwise permitted by this Agreement, the number of positions reserved each year may be increased or decreased only by mutual written consent of both parties to this Agreement.

2. Admission Requirements.

(a) All Idaho resident students designated as eligible for benefits under this Agreement must apply for admission to the School in accordance with the regular admission procedures of the School, which includes the application process of the American Medical College Application Service, and the screening criteria and interview procedures developed by the School.

(b) The School agrees to designate at least ~~two to four (4)~~ Idaho licensed physicians approved by SBOE to serve on the School's Admissions Selection Committee for the purpose of assisting in the selection of the Idaho resident students to be admitted pursuant to this Agreement. The Assistant Dean for Idaho Affairs will also serve as a member of such Admissions Selection Committee. The Idaho licensed physicians will also participate as full voting members in selection deliberations involving Idaho resident student applicants. Idaho physicians may participate by teleconference but if they attend in person, then the SBOE will be responsible for all SBOE pre-approved travel expenses related to the Idaho licensed physicians serving on the Admissions Committee, in accordance with Idaho State Board of Examiner's travel policies. The Dean of the School, or his designee, shall have final authority over the acceptance or rejection of Idaho student applicants.

3. Rules and Regulations. Except as otherwise expressly provided for in this Agreement, Idaho resident students holding reserved positions shall be subject to the same academic, disciplinary, and other rules, regulations, requirements, and privileges that are applicable to all other students in the School.

4. Clinical Rotations in Idaho. The School will encourage Idaho sponsored students to participate in shadowing Idaho physicians after the first year of school and will offer electives during the senior year of school. As part of the regular course of instruction for an M.D. degree, students participate in ambulatory clinical rotations during the third year of training. The parties agree that the Idaho resident students enrolled pursuant to the cooperative program covered by this Agreement shall serve such ambulatory clinical rotations at facilities in the state of Idaho, to the extent such opportunities are reasonably available. Upon a showing of hardship by the Idaho resident student, this requirement that an ambulatory clinical rotation occur at a facility in the state of Idaho may be waived by the SBOE. The coordination of such ambulatory clinical rotations shall be the responsibility of the School. The School shall report annually to the SBOE on the status of student-~~clinical~~ rotations in the state of Idaho.

5. Tuition. Idaho resident students who are enrolled under the provisions of this Agreement shall be assessed the tuition and fees established for Utah resident students. In addition, Idaho resident students may be assessed any additional tuition and fees that may be required by law, ~~or~~ required by SBOE, or are otherwise necessary to cover any shortfall between the Annual Support Fee (as defined below) and the tuition and fees established for non-resident students.

6. Annual Support Fee and Payments.

(a) The total annual support fee that SBOE agrees to pay the School for each Idaho resident student enrolled in the School under this cooperative program for the ~~2008-09~~11-12 academic year shall be \$~~37,600~~5,177 per Idaho resident student which is the amount appropriated by the State of Idaho ~~(the "Annual Support Fee")~~. Thereafter, the parties agree that the ~~a~~Annual ~~s~~Support ~~f~~Fee for each Idaho resident student shall increase by an amount which is equal to 120% of the increase in the Consumer Price Index Higher Education Cost Adjustment (HECA) index. The index used shall be the published ~~December to December Consumer Price Index~~ HECA index for the 2nd most recently available year preceding the academic year. ~~The published Consumer Price Index used will be from the U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers, U.S. City Averages, All Items.~~

(b) The SBOE's annual support fee obligation each academic year shall ~~only~~ be for Idaho resident students ~~actually~~ enrolled in the cooperative program ~~under this Agreement during such academic year, and accordingly shall be subject to adjustment as described in Section 8 hereinbelow.~~ The annual support fee for any student(s) on a leave of absence pursuant to Section 1(c) of this Agreement shall be placed in an escrow account by the School to be used upon a student's return to the School. If a student does not return to the School, moneys in the escrow account will be returned to the State of Idaho through the SBOE consistent with the terms of Section 8 of this Agreement.

(c) The SBOE agrees to make the annual support fee payment to the School within thirty (30) days after receiving from the School the annual support fee statement, which details the Idaho resident students enrolled under this Agreement.

(d) SBOE's payment obligation for each Idaho resident student enrolled in the School pursuant to this Agreement will continue for the length of enrollment of each Idaho resident student in the School. The receipt of any scholarship by an Idaho resident student, including any federal scholarship, will not reduce the SBOE's obligation under this Agreement.

(e) The School agrees to collect the incentive fee assessed by SBOE pursuant to Idaho Code §33-3723, establishing the Idaho Rural Physician Incentive Program. Each academic year SBOE will notify the School of the amount to be collected from each Idaho resident student enrolled pursuant to this cooperative program for that school year. The School will collect the fee from all Idaho sponsored students, and promptly transfer such funds to SBOE.

7. Legislative Appropriation.

(a) SBOE agrees that it will include support obligations which it anticipates will become due as a result of this Agreement in each budget submitted to the Idaho

Legislature, and will use good faith efforts to secure appropriations to meet such anticipated obligations. However, if the Idaho Legislature fails to ~~make any appropriation, or~~ appropriates an amount of money ~~insufficient~~ to meet the total amount due to the School for an academic year, then SBOE will not be obligated for support fee payments beyond the funds appropriated, ~~if any~~. If the Idaho Legislature appropriates an amount of money insufficient to meet the total amount due to the School for an academic year, then each Idaho resident student who determines to remain in the program shall be responsible for the difference between the annual support fee and the per student appropriation.

~~(a)~~(b) If the Idaho Legislature fails to make any appropriation or otherwise determines to discontinue Idaho's participation in this cooperative program, then in such event the School will not be obligated to reserve any positions in future entering classes, and the School agrees to permit each Idaho resident student enrolled under this Agreement to continue in the course of instruction leading to the M.D. degree, so long as a satisfactory academic record is maintained and the Idaho resident student pays the applicable tuition and fees. Under these circumstances, the School will have the right to charge each Idaho resident student the tuition and fees established for non-resident students.

8. Refunding of Annual Support Fee. In the event an Idaho resident student enrolled pursuant to this Agreement is terminated during an academic year for any reason, then the School will refund to SBOE the annual support fee payment made on behalf of such student, subject to the same rules and regulations as apply generally to the refund of tuition and fees to medical students enrolled in the School that terminate their course of study during an academic year.

9. Information to SBOE. The School will submit an annual report to SBOE on or before August 31 of each year of this Agreement, which shall include, ~~In addition, the School will provide to SBOE on or before August 31 of each year of this Agreement~~ the names of students accepted for the upcoming school year, and a report on the academic progress of continuing students enrolled under this Agreement. From time to time, as information is ~~required~~ necessary for the successful operation of this cooperative program, the School will, upon reasonable request, make additional reports to the SBOE. Such information is limited to that permitted to be disclosed by the School to the SBOE under the Family Education Rights and Privacy Act, 20 U.S.C.A. § 1232g, as amended.

10. Term and Termination. The effective date of this Agreement shall coincide with the beginning of the ~~2008-2009~~ 11-2012 academic year of the School, and will expire at the conclusion of the ~~2010-2011~~ 2013-2014 academic year of the School. Notwithstanding, this Agreement may be terminated by either party prior to the expiration date for any reason upon 30 days written notice to the other party. The parties agree that the expiration or termination of this Agreement shall not affect: (a) the School's obligation with respect to Idaho resident students enrolled under this Agreement at the time of expiration or termination who have not finished their course of study, and (b) SBOE's support fee obligation with respect to Idaho resident students

enrolled under this Agreement at the time of expiration or termination who have not finished their course of study, unless such students withdraw or are dismissed as discussed in Section 1(b) hereinabove. This Agreement may not be modified or amended except by a written instrument executed by both parties. If full payment by the SBOE is not made by the due date for such payment, then the Agreement may be terminated immediately, except as it applies to individual Idaho resident students currently enrolled at the School at the time of such termination.

11. Notice. All notices and other communications shall be addressed as follows:

Idaho State Board of Education
Dr. Mike Rush
Executive Director
Office of the State Board of Education
PO Box 83720
Boise, ID 83720-0037

University of Utah
Dr. A. Lorris Betz
Senior Vice President for Health Sciences
University of Utah School of Medicine
50 North Medical Drive
Salt Lake City, UT 84132-0001

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement on this ____ day of _____, 2011~~08~~.

IDAHO STATE BOARD OF EDUCATION

UNIVERSITY OF UTAH

Executive Director

Idaho State Board of Education

_____Senior Vice
President for Health Sciences
University of Utah

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

SUBJECT

Board Policy, Section F and V – first reading

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures Policy, Section V.F. and V.K.

BACKGROUND/ DISCUSSION

The current policy on Board approval of capital projects is not consistent with the Board's preferred practice in terms of project approval milestones. At the Board's June 2009 meeting the Board has asked that the capital project approval process be broken down into the following major steps:

1. Planning & Design
2. Financial Review
3. Project Approval
4. Financing Approval

While institutions generally follow the Board's preferred approval process, the process has never been formally documented nor adopted.

IMPACT

The revised policies will provide clarity in terms of the Board's expectations and preferred process for submitting requests for major capital project approval.

ATTACHMENTS

Attachment 1 – Proposed Revised Policy, Section V.F..

Page 3

Attachment 2 – Proposed Revised Policy, Section V.K..

Page 5

STAFF COMMENTS AND RECOMMENDATIONS

The revisions to Board policy, V.K. Construction Projects, are as follows:

1. The authorization limits are moved from Paragraph 2 to Paragraph 1 of the Policy, and subparagraphs are added for ease of reading. The quarterly reporting requirement for delegated authority projects is removed.
2. New Paragraphs 2 – 6 set forth the steps for capital project approval from proposed plans through construction and financing.
3. Paragraph 7 establishes a process for annual review by the Board of capital plans coinciding with the Permanent Building Fund Advisory Council's timeline.

The revised policies will help facilitate the Board's oversight duties. Institutions and agencies will benefit from clear and consistent policies and procedures on capital project approval.

Staff recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOARD ACTION

I move to approve the first reading of the amendment to Board Policy V.F. Bonds and Other Indebtedness and V.K. Construction Projects, as submitted.

Moved by_____ Seconded by_____ Carried Yes____ No____

F. Bonds and Other Indebtedness

1. General Powers

The University of Idaho, Idaho State University, Lewis-Clark State College, and Boise State University may, by a majority vote of all the members of the Board, borrow money with or without the issuance of bonds pursuant to Chapter 38, Title 33, Idaho Code. The Board must act by formal resolution. Such indebtedness is not an obligation of the state of Idaho but is an obligation solely of the respective institutions and the respective board of trustees. Any indebtedness is to be used to acquire a project, facility, or other asset that may be required by or be convenient for the purposes of the institution. For indebtedness of a major capital project, an institution shall first obtain approval in accordance with Board policy V.K. Student fees, rentals, charges for the use of the projected facility, or other revenue may be pledged or otherwise encumbered to pay the indebtedness. Refunding bonds also may be issued.

Eastern Idaho Technical College is not authorized to borrow money under Chapter 38, Title 33, Idaho Code.

2. Attorney General's Opinion

The Board or the institution may request the Attorney General of Idaho to review and pass upon the validity of a proposed bond issue. If found valid, the bond is an incontestable, binding obligation on the institution.

3. Private Sale

A private sale of bonds is permitted only with the prior approval of the Board as the governing body of the institution. The chief executive officer of the institution must justify why a public sale is not desirable and explain the benefits of a private sale of bonds.

4. Responsibility of the Chief Executive Officer

The chief executive officer of the institution is responsible for compliance with state law and these provisions when any indebtedness is incurred.

5. Expenditure of Excess Revenue

Expenditure of project revenues over and above that pledged or otherwise encumbered to meet the indebtedness is limited to expenditures for projects identified in the bond's Official Statement. Expenditure of excess revenue for other projects requires prior Board approval. Expenditures between two hundred fifty

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: F. Bonds and Other Indebtedness

~~April 2002~~ [June 2011](#)

thousand dollars (\$250,000) and five hundred thousand dollars (\$500,000) require prior approval from the executive director and expenditures greater than five hundred thousand dollars (\$500,000) require prior Board approval.

1. Major Project Approvals – Authorization Limits

- a. Without regard to the source of funding, proposals by any institution or agency under the governance of the Board to make capital improvements, either in the form of alteration or repair to existing facilities or construction of new facilities, when the cost of the project is estimated to be between three hundred fifty thousand dollars (\$350,000) and seven hundred fifty thousand dollars (\$750,000), must first be submitted to the executive director for review and approval.
- b. Without regard to the source of funding, proposals by any institution or agency under the governance of the Board to make capital improvements, either in the form of alteration or repair to existing facilities or construction of new facilities, when the cost of the project is estimated to exceed seven hundred fifty thousand dollars (\$750,000), must first be submitted to the Board for its review and approval.
- c. Projects requiring executive director or Board approval must include a separate budget line for architects, engineers, or construction managers and engineering services for the project cost. ~~Budgets for maintenance, repair, and upkeep of existing facilities must be submitted for Board review and approval as a part of the annual operating budget of the institution or agency.~~
- d. Without regard to the source of funding, before any institution or agency under the governance of the Board begins to make capital improvements, either in the form of alteration or repair to existing facilities or construction of new facilities, it must be authorized based on the limits listed below.

<u>Project Originally Authorized By</u>	<u>Original Project Cost</u>	<u>Cumulative Value of Change(s)</u>	<u>Aggregate Revised Project Cost</u>	<u>Change Authorized By</u>
<u>Local Agency</u>	<u>< \$350,000</u>	<u>Any</u>	<u>< \$350,000</u>	<u>Local Agency</u>
<u>Local Agency</u>	<u>< \$350,000</u>	<u>Any</u>	<u>\$350,000-\$750,000</u>	<u>Executive Director</u>
<u>Local Agency</u>	<u><\$350,000</u>	<u>Any</u>	<u>> \$750,000</u>	<u>SBOE</u>
<u>Executive Director</u>	<u>\$350,000-\$750,000</u>	<u><= \$250,000</u>	<u><= \$500,000</u>	<u>Local Agency</u>
<u>Executive Director</u>	<u>\$350,000-\$750,000</u>	<u>Any</u>	<u>>\$750,000</u>	<u>SBOE</u>
<u>SBOE</u>	<u>> \$750,000</u>	<u><\$350,000</u>	<u>Any</u>	<u>Local Agency</u>
<u>SBOE</u>	<u>> \$750,000</u>	<u>\$350,000-\$750,000</u>	<u>Any</u>	<u>Executive Director</u>
<u>SBOE</u>	<u>> \$750,000</u>	<u>>\$750,000</u>	<u>Any</u>	<u>SBOE</u>

42. Major Project Approvals - Proposed Plans

Without regard to the source of funding, before any institution, ~~school~~ or agency under the governance of the Board begins project concept and formal planning to make capital improvements, either in the form of ~~renovation or addition to or demolition alteration or repair~~ of existing facilities, or construction of new facilities, when the total cost of the capital project is estimated to exceed ~~five~~ seven hundred ~~fifty~~ thousand dollars (\$~~7500~~,000), such proposed plans must first be submitted to the Board for its review and approval. ~~All projects identified on the institutions', schools or agencies' six-year capital plan must receive Board approval. Project concept planning includes, but is not limited to, development of project scope statements and supporting analysis, concept level pre-design studies of alternatives, potential project budget ranges, concept schedule information, and project-specific fundraising.~~

3. Major Project Approvals - Planning and Design

Board approval is required before any institution or agency begins planning and design for a project that has previously received approval for project concept and formal planning. Planning and design encompasses the preparation of architectural and engineering documents and associated budget and schedule information through the completion of the construction documents for bidding.

4. Major Project Approvals – Preliminary Project and Financing Plan

Board approval of a preliminary project budget and financing plan (including financial pro forma, debt/operating expenses ratio, pledges, strategic facilities fees, and other material financial information) is required for a project that has previously received approval for its planning and design.

5. Major Project Approvals – Final Approval – Construction, Financing and Incurrence of Debt

- a. Board approval is required to proceed with the construction of a project that has received approval for its preliminary project budget and financing plan. These two respective levels of approval may be requested concurrently.
- b. Board approval for financing capital projects via the issuance of bonds, or incurrence of any other indebtedness, is required pursuant to Board policy V.F. for a project that has previously received approval for construction. All other projects financed entirely without indebtedness do not need separate approval for financing. The Board will not consider concurrent requests for approval for construction and financing for the same project. Therefore, institutions seeking

~~April 2010~~ June 2011

approval for project financing must bring a request for said approval to a Board meeting subsequent to the meeting at which project construction is approved.

~~2. Project Approvals~~

~~Without regard to the source of funding, proposals by any institution, school or agency under the governance of the Board to make capital improvements, either in the form of renovation or addition to or demolition of existing facilities, when the cost of the project is estimated to be between three hundred fifty thousand dollars (\$350,000) and seven hundred fifty thousand dollars (\$750,000), must first be submitted to the executive director for review and approval. Without regard to the source of funding, proposals by any institution, school or agency under the governance of the Board to make capital improvements, either in the form of renovation or addition to or demolition of existing facilities or construction of new facilities, when the cost of the project is estimated to exceed seven hundred fifty thousand dollars (\$750,000), must first be submitted to the Board for its review and approval. Project cost must be detailed by major category (construction cost, architecture fees, contingency funds, and other). When a project is under the primary supervision of the Board of Regents or the Board and its institutions, school or agencies, a separate budget line for architects, engineers, or construction managers and engineering services must be identified for the project cost. Budgets for maintenance, repair, and upkeep of existing facilities must be submitted for Board review and approval as a part of the annual operating budget of the institution, school or agency.~~

7. Board Review of Capital Improvement Plans

Capital improvement plans shall be reviewed by the Board at the regularly scheduled June meeting and shall include:

- a. An annual capital projects plan tied to the campus master plan;
- b. A list of major capital projects for which funding from the Permanent Building Fund may be requested for the next fiscal year; and
- c. A six-year capital improvement plan.

38. Fiscal Revisions to Previously Approved Projects

If ~~the~~ a project budget increases above the approved amount, then the institution, school, or agency ~~may~~ shall be required to seek further authorization based on the limits established in Section 1.., ~~as follows:~~

Project Originally	Original Project	Cumulative	Aggregate Revised	Change
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Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
 SECTION: V. FINANCIAL AFFAIRS
 Subsection: K. Construction Projects

ATTACHMENT 2

~~April 2010~~ June 2011

Authorized By	Cost	Value of Change(s)	Project Cost	Authorized By
Local Agency	< \$350,000	Any	< \$350,000	Local Agency
Local Agency	< \$350,000	Any	\$350,000 - \$750,000	Executive Director
Local Agency	< \$350,000	Any	> \$750,000	SBOE
Executive Director	\$350,000 - \$750,000	< \$250,000	< \$500,000	Local Agency
Executive Director	\$350,000 - \$750,000	Any	> \$500,000 - \$750,000	SBOE
SBOE	> \$750,000	< \$350,000	Any	Local Agency
SBOE	> \$750,000	\$350,000 - \$750,000	Any	Executive Director
SBOE	> \$750,000	> \$750,000	Any	SBOE

~~All modifications approved by the Executive Director shall be reported quarterly to the Board.~~

49. Project Acceptance

Projects under the supervision of the Department of Administration are accepted by the Department on behalf of the Board and the state of Idaho. Projects under the supervision of an institution, ~~school~~ or agency are accepted by the institution, ~~school~~ or agency and the project architect. Projects under the supervision of the University of Idaho are accepted by the University on behalf of the Board of Regents.

510. Statute and Code Compliance

- All projects must be in compliance with Section 504 of the Rehabilitation Act of 1973 and must provide access to all persons. All projects must be in compliance with applicable state and local building and life-safety codes and applicable local land-use regulations as provided in Chapter 41, Title 39, and Section 67-6528, Idaho Code.
- In designing and implementing construction projects, due consideration must be given to energy conservation and long-term maintenance and operation savings versus short-term capital costs.

BOISE STATE UNIVERSITY

SUBJECT

Enterprise System Roadmap Implementation Project

BACKGROUND/DISCUSSION

Enterprise systems are the administrative and academic systems of record for Boise State University. They include student records, finance, research, learning management, HR/Payroll, business intelligence, and other systems that enable us to operate as a major metropolitan university. These systems enable achieving and supporting the mission of the University.

Boise State University has developed a roadmap to not only transition us to a more sustainable and maintainable system state, but more importantly to gain more value and effectiveness from our enterprise systems, to focus on core objectives for the University, and to adopt best practices for enterprise systems operation and development. This is a significant part of our IT simplification strategy. The ultimate goal is a shift of resources from sustaining systems to innovating and advancing systems.

IMPACT

There are several projects and initiatives that will need to be part of the Enterprise System Roadmap Implementation project to meet our objectives. These projects and initiatives include: Financial System upgrade; HR/Payroll upgrade; Student System upgrade; implementing a research administration system to support our rapidly growing research mission; expansion of the data warehouse and business intelligence; identity management and security improvements; improvements and expansion of document management; replacing technical infrastructure as needed; evolving to a web-enabled and service-oriented architecture development environment; implementing an individual unified web experience; evaluation and implementation of operational and organizational best practices for both technology and functional processes; creation of institutional policies, practices, and governance necessary to advance, sustain, and support enterprise systems.

The University will request Board approval for various project-related expenditures at future Board meetings.

STAFF COMMENTS AND RECOMMENDATIONS

Where applicable, BSU should ensure that each phase of this project supports, or at a minimum does not conflict with, the Board's ongoing work towards development of the postsecondary piece of a statewide longitudinal data system.

Staff has no recommendations.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOARD ACTION

This item is for informational purposes only. Any action will be at the Board's discretion.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOISE STATE UNIVERSITY

SUBJECT

Replace/Upgrade PeopleSoft ERP system infrastructure

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.3.

BACKGROUND/DISCUSSION

Boise State University needs to replace the aging computer equipment that supports the PeopleSoft Enterprise university systems. A portion of the existing equipment is 7 years old and needs to be updated and replaced with modern equipment and better technology. In anticipation of a major upgrade from a UNIX based equipment platform to a Linux based equipment platform, and with the last 2 years of budget constraints, the University has deferred replacing equipment and extended maintenance contracts on these servers and storage platforms. These contracts will expire soon and cannot be renewed as the vendor will no longer support obsolete equipment.

This conversion of platforms will increase the capacity and capability of the enterprise system at a substantially lower cost per CPU and per terabyte of storage. Normal replacement of equipment, staggered over multiple years, using State purchasing contracts would normally not reach the dollar amount that would trigger a review by the Board. It is due to this one time conversion, that we have staged this large scale equipment replacement.

IMPACT

The University's PeopleSoft system, is currently running on IBM AIX UNIX. The University has been planning an upgrade to the next level of code for PeopleSoft for 2 years. This new level of code will not run on AIX UNIX. It will run on the Linux operating system. This upgrade will allow the University to purchase more cost effective equipment. The equipment will allow the University to upgrade to the new code on new equipment, while still running the older software on the older equipment during the upgrade process.

If the University is unable to purchase the new equipment, we risk running our ERP system on equipment that is not under warranty and that is quickly approaching its mean-time to failure, leading to an increased risk of losing operational stability.

The cost of the equipment and data storage will not exceed \$1.3 million. All the equipment will be purchased from existing State Division of Purchasing contracts. Funds have been earmarked and are available to make this purchase.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

ATTACHMENTS

Attachment 1 – PeopleSoft on VM diagram

Page 3

STAFF COMMENTS AND RECOMMENDATIONS

Procurement, install and conversion will occur over approximately a three to four year time frame. The source of funds will be a mix of appropriated and local funds.

Staff recommends approval.

BOARD ACTION

I move to approve the request by Boise State University to proceed with procurement of server and data storage equipment from existing State Division of Purchasing contracts for a total cost not to exceed \$1,300,000.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

People Soft Hardware replacment and upgrade

Virtual Center with vmotion

Physical Servers



Dell R810 4 x 6 core processors with 256GB of memory
includes VM Licensing

QTY Unit Cost Extended

10 \$35,000 \$350,000

Rack Mount Servers form the Virtual Machine Cluster
By deploying VM, a hardware failure does not require
software reinstallation. Can run multiple instances
on the same physical cluster.

Oracle Databases & Application Servers Storage



Netapp

4 \$148,000 \$592,000

Redundant Network data storage devices
Storage is independent of servers, optimized.

VM Cluster for PeopleSoft web servers

Physical Servers



Dell R810 4 x 6 core processors with 256GB of memory
includes VM Licensing

3 \$35,000 \$105,000

Web Servers (internet)
Sit in the DMZ and are separated from production

Isilon Storage Cluster



Isilon storage devices

1 \$100,000 \$100,000

Web data storage
DMZ storage for Web Delivered content

Power Distribution



Power Distribution Units (PDU's)

1 \$30,000 \$30,000

PDU's for Server Rack
Provides electrical connection for servers in the rack

Rack Mount Keyboard, Video, Mouse



KVM

1 \$3,000 \$3,000

One Rack mount KVM will control all servers

Server Networking



Network 10 Gigabit switches

1 \$120,000 \$120,000

High speed data transfer between servers and storage

Total

\$1,300,000

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BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOISE STATE UNIVERSITY

SUBJECT

Retail space lease at the Nampa Gateway Center

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.1.b & V.I.2.e, Section 67-5708, Idaho Code

BACKGROUND/DISCUSSION

The success of the Bronco Shop at the Treasure Valley Marketplace in Nampa warrants an expansion in the area. The proposed lease will provide Boise State University with an additional Bronco Shop in the Nampa/Meridian area. The proposed lease space will place the Bronco Shop next door to the new Idaho Aquarium and in close proximity to the new Edwards Theater in Nampa. The additional location will be much larger than the current location at the Treasure Valley Marketplace. The larger store will allow for a greater variety of merchandise and availability of stock on hand.

The new location will serve the insignia demand in the Meridian and Nampa communities. This location is ideally situated between the two communities allowing the students, faculty, staff, alumni, and the community easy access.

IMPACT

The ten year lease option will give Boise State the ability to secure a substantially reduced lease rate of \$15.50 per sq. ft. In addition, the lessor has agreed to a complete build out of the space.

ATTACHMENTS

Attachment 1 – Proposed Retail Space Lease

Page 3

Attachment 2 – Approval Minutes IPBF for 10 year lease

Page 33

STAFF COMMENTS AND RECOMMENDATIONS

This lease of 2,400 square feet reflects a significant savings per square foot over what BSU is currently paying for its current Nampa Broncoshop leasehold space (\$27.32 vs. \$15.50). First year cost would be \$37,200, with a 3% annual escalator clause, making the total 10 year contract value \$426,456.

The Permanent Building Fund Advisory Council approved this 10 year lease on December 7, 2010.

Staff recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOARD ACTION

I move to approve the request by Boise State University to lease space in the Nampa Gateway Center as provided in Attachment 1, and to authorize the University's Vice President of Finance and Administration to execute all necessary documents on behalf of the Idaho State Board of Education.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

LEASE AGREEMENT FOR SPACE

THIS LEASE AGREEMENT FOR SPACE (this “Lease”, or “Lease Agreement”) is entered effective upon the date of the last required signature (the “Effective Date”), by and between DDR NAMPAL LLC, 3300 Enterprise Parkway, Beachwood, Ohio 44122, Tax ID #20-2708902 (the “Lessor”, or “Lessor”), and the STATE OF IDAHO, by and through BOISE STATE UNIVERSITY DBA BRONCO SHOP, 517 West McGregor Court, Boise, Idaho 83705 (the “Lessee”, or “Lessee”), for the leasing of that real property described below and referred to as the “Premises”. The Lessor and the Lessee may be referred to collectively as the “Parties”. The Parties specifically agree and acknowledge that the approval signature of the Leasing Manager, Division of Public Works, Department of Administration, is a required signature.

WITNESSETH

WHEREFORE, in consideration of the mutual covenants, agreements, and conditions contained in this Lease Agreement, the Parties agree as follows.

1. LEASE OF PREMISES. The Lessor does hereby demise and lease to the Lessee the Premises situated in the City of Nampa, County of Canyon, State of Idaho, known and described as follows: Unit #F107, located within the Nampa Gateway Center, Nampa, Idaho 83651 (the “Shopping Center”, or “Nampa Gateway Center”). The lease of the Premises includes the right, together with other tenants of the Nampa Gateway Center and their employees and business invitees, to use the common public areas of the Nampa Gateway Center for their intended use and subject to the other provisions of this Lease Agreement but includes no other rights not specifically set forth herein. A site plan showing the location of the Premises and the Shopping Center is attached hereto as Exhibit A and made a part hereof. Lessor shall have the right from time to time, in its sole discretion, to increase, reduce and/or otherwise alter (i) the Shopping Center, including, without limitation, the sale and/or acquisition of land, whether or not currently subdivided, and/or (ii) the buildings comprising the Shopping Center, provided the same shall not materially adversely affect Lessee’s business operations within the Premises.

2. TERM. The term of this Lease Agreement is one hundred twenty (120) months (the “term”, or “Term”). As time is of the essence, the term of this Lease Agreement shall begin on the earlier to occur of (i) thirty days following the Delivery of Possession Date (hereinafter defined), or (ii) the date the Lessee initially opens for business to the public in the Premises (the “Rent Commencement Date”) and shall end at midnight on the expiration of the tenth (10th) lease year following the Rent Commencement Date, unless sooner terminated. The term “lease year” shall mean a period of twelve (12) consecutive full calendar months. If the Rent Commencement Date does not occur on the first day of a calendar month, the first lease year shall include any partial calendar month. The Parties agree that this Lease Agreement is subject to the termination, expiration and renewal rights set forth in this Lease Agreement.

3. LEASE PAYMENT. The Lessee shall pay to Lessor a base rental payment for the term of this Lease Agreement in monthly installments in the amounts set forth in Paragraph 7.B of this Lease Agreement (“Minimum Rent”). The Lessee shall pay Minimum Rent to the Lessor at its office or other place as the Lessor may from time to time designate without any deduction or setoff, in advance, on the first day of each calendar month. The total gross leasable area of the Premises is two thousand four hundred (2,400) square feet, subject to measurement using the standard set forth hereinbelow.

Either the Lessor or the Lessee shall have the right to measure the Premises to determine the actual gross leasable area of usable Premises within ten (10) business days from the Delivery of Possession Date. Any such measurement shall be calculated from the exterior face of any exterior walls and from the centerline of common walls. In the event the measurement discloses that the actual gross leasable area of the Premises is either more or less than the gross leasable area of the Premises as set forth in this paragraph above, the other party shall have the right to either (i) accept the measurement, or (ii) have the Premises measured by a licensed architect mutually acceptable to the Lessor and the Lessee, at the cost and expense of the requesting party, and the results of such measurement shall be binding upon the Lessor and the Lessee. The Lessor and the Lessee shall execute an amendment to this Lease Agreement reflecting the actual gross leasable area of the Premises. In the event the measurement discloses that the actual gross leasable area of the Premises is either more or less than the gross leasable area of the Premises as set forth in this paragraph above, all charges accruing under this Lease Agreement paid to the Lessor by the Lessee prior to the measurement shall be adjusted in the manner hereinafter provided. If, as a result of the measurement, it is determined that the actual gross leasable area of the Premises is more than the gross leasable area of the Premises as set forth above, the Lessee shall pay to the Lessor the difference between the charges actually due and the charges actually paid within fifteen (15) days after receipt of a statement therefor. If, as a result of the measurement, it is determined that the actual gross leasable area of the Premises is less than the gross leasable area of the Premises as set forth above, the Lessor shall credit the excess of each charge accruing under this Lease against the amount of each such charge next becoming due.

4. ACCEPTANCE OF PREMISES, LESSOR'S WORK, AND SIGNAGE.

- A. Inspection and Acceptance. Lessor shall deliver the Premises to Lessee substantially in accordance with floor plans and specifications attached to this Lease Agreement as Exhibit B, and incorporated herein by reference. Prior to or on the Delivery of Possession Date, Lessee shall provide Lessor with a written statement acknowledging inspection and acceptance of the Premises and that the Lessor's Work is substantially complete. Lessee's obligations under this Lease Agreement shall not commence until Lessee's acceptance of the Premises. Lessee's inspection and acceptance of the Premises are based upon what may be reasonably observed by one untrained or unfamiliar with building inspections. At Lessee's discretion and at Lessee's sole cost and expense, Lessee may have particular conditions or parts of the Premises inspected by one trained or familiar with building inspections. In no event shall Lessee's inspection, or inspection by any agent of Lessee, be deemed a waiver of any defects in the Premises.
- B. Lessor's Work. Lessor shall, on Lessee's behalf, remodel a 2,400 square foot retail facility, as noted in and in accordance with Exhibit B of this Lease Agreement ("Lessor's Work"). Lessor hereby agrees to commence Lessor's Work upon receipt of an executed lease agreement and any permits required for Lessor to commence Lessor's Work and to substantially complete Lessor's Work within one hundred twenty (120) days following the execution of this Lease Agreement by Lessor and Lessee, subject to Events of Force Majeure (hereinafter defined) and any delays caused by Lessee, Lessee's agents, employees or contractors (the "Delivery of Possession Date"). Notwithstanding anything contained in this Lease Agreement to the contrary, under no circumstances shall Lessor be liable to Lessee for any delay or failure to commence or complete its construction or deliver possession of the Premises to Lessee. All Work shall be done in a workmanlike manner and must comply with all applicable codes, ordinances, rules and regulations. In the event that a dispute shall arise as to whether or not Lessor's Work is substantially complete, the parties shall mutually select a third party architect to evaluate whether such construction is substantially complete in accordance with plans and specifications therefor, and the determination of such third party architect shall be conclusive and binding upon the parties.

hereto.

The Lessor agrees to maintain any and all insurance coverages applicable to Lessor's Work, including worker's compensation and liability insurance. The Lessor further agrees to indemnify, defend and save harmless the Lessee from and against any and all claims, damages, costs, reasonable legal fees, expenses, actions and suits whatsoever, including injury or death of others or any employee of the Lessor, subcontractors, agents or employees, caused directly or indirectly by the carrying out of the Work, or caused by any matter or thing done, permitted or omitted to be done by the Lessor, Lessor's agents, subcontractors or employees and occasioned by the negligence of the Lessor, Lessor's agents, subcontractors or employees (but excluding the negligence or willful misconduct of the Lessee, Lessee's agents, employees or contractors.

Lessor shall obtain any and all permits and inspections applicable to Lessor's Work. Lessee shall obtain a Certificate of Occupancy for the permitted use of the Premises prior to the Rent Commencement Date. Prior to construction, plans shall be reviewed and approved by the Division of Building Safety, the State Fire Marshall and the Permanent Building Fund Advisory Council. Any cost associated with that review will be at the expense of the Lessor. A copy of the Division of Building Safety's Plan Review Application is attached to this Lease Agreement as Exhibit D. Local governments have jurisdiction over privately owned buildings. If any conflict arises between applicable codes, the more stringent code shall take precedence. The State of Idaho's Division of Building Safety has a listing of the minimum building and safety codes adopted by the state of Idaho and the federal government codes at http://dbs.idaho.gov/building/id_code.html.

The Lessee agrees and acknowledges that the Lessee shall perform no work within the Premises prior to the Rent Commencement Date except for installing the Lessee's trade fixtures, equipment, furniture and signage without the prior written consent of the Lessor.

- C. Signage. The Lessee, upon the Lessor's prior written approval, may install its signage on the front portion of the Premises, provided such signage complies with the Lessor's signage requirements attached hereto as Exhibit C and applicable codes. Upon the expiration or earlier termination of the term of this Lease Agreement, the Lessee shall remove its sign and restore the sign band/fascia to its original condition. No sign, other advertising or any other item may be placed by the Lessee on the interior part of either windows or doors without the Lessor's prior written approval, which approval shall not be unreasonably withheld. The Lessee shall not utilize flashing, painted, neon or moving signs or lights.

5. NO WASTE. Lessee will not commit waste on the Premises, nor will it disfigure or deface any part of the building, grounds, or any other part of the Premises, including fixtures.

6. REPAIRS, MAINTENANCE, PARKING AND UTILITIES.

- A. Repair and Maintenance by the Lessor. The Lessor covenants that it will provide, perform, and pay for the services, maintenance and parking as follows and the same shall be included in the Common Area Expenses (hereinafter defined) of the Nampa Gateway Center:
- 1) Domestic water and sewer.
 - 2) General building structure and related equipment (exterior only);
 - 3) Exterior lighting, including landscaped areas, parking area and walkway;
 - 4) Cleaning ground and parking area of debris on an "as needed" basis;
 - 5) A low environmental impact janitorial service for the common areas of the building on an "as needed" basis;

- 6) Outside ground maintenance shall be provided on an "as needed" basis. Snow removal shall include removal of snow from parking lots and walkways on an "as needed" basis;
- 7) Lawn and shrubbery care weekly during season on an "as needed" basis; and
- 8) Lighted automotive parking spaces will be maintained with adequate ingress and egress available. Handicapped spaces will be provided equal to the requirements of the Americans With Disabilities Act (ADA).

Notwithstanding anything contained in this Lease Agreement to the contrary, Lessor shall have no responsibility to undertake any repairs required by reason of the negligence or willful misconduct of Lessee, Lessee's employees, agents, invitees, licensees, or contractors. The provisions of this Paragraph shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain, in which events the obligations of Lessor shall be controlled by either Paragraph 12 or Paragraph 42 hereof. It is expressly understood that Lessor shall not be responsible for any portions of the Premises constructed by Lessee or any prior occupant of the Premises.

- B. Repair and Maintenance by the Lessee. Lessee shall perform all maintenance and repairs (including necessary replacements) to the interior of the Premises to keep it in good condition (including the storefront, glass, signs, ceilings, interior walls, interior side of perimeter walls, floors, floor coverings, plumbing electric, heating and air condition, sprinklers and lighting fixtures), and do all required maintenance and repairs as may be required by any laws, ordinances or requirements of public authorities. From the point they serve the Premises exclusively, whether located inside or outside, the Lessee shall make all repairs, replacements and alterations necessary to maintain in good condition all lines, apparatus, and equipment relating to utilities (including heating, air conditioning, water, gas, electricity and sewerage). The Lessee shall maintain a service contract for the regular seasonal maintenance of the heating, ventilating and air condition ("HVAC") system servicing the Premises with a reputable HVAC contractor at all times during the term of this Lease Agreement. In addition to the foregoing, the Lessee shall contract directly, at Lessee's sole cost and expense, for the removal of rubbish from the Premises.
- C. Utilities. The Lessee shall be solely responsible for and promptly pay all charges for the use and consumption of sewer, gas, electricity, water, phone, trash removal and all other utility services used within the Premises. On or before the date the Lessor delivers possession of the Premises to the Lessee, the Lessee shall contact each public utility company having a meter separately serving the Premises and shall change the name of the account to the Lessee's name, such that the Lessee is the party liable for all utility consumption charges for the Premises from the date of delivery of possession of the Premises hereunder until the expiration or early termination of the Term of this Lease Agreement. If any utilities are not separately metered or assessed, then in addition to the Lessee's payment of separately metered charges, the Lessee shall pay the Lessor, within thirty (30) days of receipt of demand therefor, the Lessee's share of the charges for non-separately metered utilities, which shall be calculated by multiplying the charges for such utility by a fraction, the numerator of which is the gross leasable area of the Premises and the denominator of which shall be the aggregate gross leasable area of the tenants who are using such utilities. In no event shall Landlord be liable for the quality, quantity, failure, or interruption of any utility services to the Premises.

7. SPECIAL PROVISIONS.

- A. Intentionally Deleted.

B. Rent Schedule.Minimum Rent

<u>Lease Years</u>	<u>\$ PSF</u>	<u>\$ Monthly</u>	<u>\$ Annum</u>
1	\$15.50	\$3,100.00	\$37,200.00
2	\$15.97	\$3,194.00	\$38,328.00
3	\$16.44	\$3,288.00	\$39,456.00
4	\$16.94	\$3,388.00	\$40,656.00
5	\$17.45	\$3,490.00	\$41,880.00
6	\$17.97	\$3,594.00	\$43,128.00
7	\$18.51	\$3,702.00	\$44,424.00
8	\$19.06	\$3,812.00	\$45,744.00
9	\$19.63	\$3,926.00	\$47,112.00
10	\$20.22	\$4,044.00	\$48,528.00
<u>Renewal Term</u>			
11	\$20.83	\$4,166.00	\$49,992.00
12	\$21.46	\$4,292.00	\$51,504.00
13	\$22.10	\$4,420.00	\$53,040.00
14	\$22.76	\$4,552.00	\$54,624.00
15	\$23.45	\$4,690.00	\$56,280.00

C. Additional Rent. In addition to the Lessee's payment of Minimum Rent as required and provided by this Lease Agreement, the Lessee agrees to pay as "Additional Rent" its Proportionate Share of the Nampa Gateway Center's Triple Net Expenses in accordance with this section. Capitalized terms used in this section shall have the meanings ascribed herein. Lessor's books and records shall be maintained in accordance with generally accepted accounting principles (GAAP) and only such costs to operate, manage, insure, secure or maintain the Nampa Gateway Center shall be allocated and billed as Triple Net Expenses.

1) For the purposes of this section, the following definitions apply:

- a. "Triple Net Expenses" shall mean Real Estate Taxes, Common Area Expenses and Property Damage Insurance.
- b. "Real Estate Taxes" shall mean all real estate taxes and assessments, ad valorem or excise, assessed or levied against the real property on which the Premises is located, before the addition of any fine, penalty, interest or cost for nonpayment and excluding any franchise, corporate, estate, inheritance, succession, income or revenue taxes. In the event Lessor successfully protests the amount of the Real Estate Taxes, Lessee's proportionate share of Real Estate Taxes shall be reduced to the successfully protested amount. Lessee agrees to pay its proportionate share of the costs of said protest, provided that the proportionate share of the cost is less than the savings realized from the protest.
- c. "Common Area" shall be defined as the area within the legal boundaries of the Nampa Gateway Center and generally means the portions of the Nampa Gateway Center which are designated and improved for common use by or for the benefit of more than one tenant or concessionaire of the Nampa Gateway Center including and if applicable, without limitation, the land and facilities utilized for or as parking areas, access and

perimeter roads, truck passageways, service corridors and stairways providing access from store premises, landscaped or buffer areas, drainage facilities, fences, ditches, exterior walks, bike paths, arcades, stairs, ramps, interior corridors, pedestrian mall areas, directory equipment, common area washrooms, shopping center signs (excluding individual tenant store signs), common utility systems, roof(s), exterior walls, exterior canopies and support and lighting for such canopies (excluding canopy area lighting that is individually metered and maintained by individual tenants), structural components of buildings, but excluding any portion of the Nampa Gateway Center so included within the common areas when designated by Lessor for a non-common use.

- d. "Common Area Expenses" shall mean only those costs incurred by Lessor to satisfy its obligations in connection with the maintenance and operation of the Common Areas of the Nampa Gateway Center. Lessor shall keep or cause to be kept the Common Areas in a reasonably neat, clean and orderly condition, properly lighted, and shall repair any damages to the facilities thereof (except as caused by the negligence or willful misconduct of Lessee, Lessee's agents, employees or contractors, but all expenses in connection with the Common Areas shall be charged and prorated in the manner hereinafter set forth. It is understood and agreed that the phrase "expenses in connection with the Common Areas" as used herein shall expressly exclude such items chargeable directly to specific tenants of the Nampa Gateway Center, to occupants of adjoining parcels, or to vacant units (limited to expenses incurred in renovating or otherwise improving or decorating or redecorating vacant units and leasing commissions, attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations for leases with tenants for such vacant units). "Expenses in connection with the Common Areas" shall be construed to include, but not be limited to, all reasonable and customary sums expended for all general improvements, maintenance, replacement and repairs, major repairs or renovations to the common areas, including, without limitation:

- Nampa Gateway Center signs, excluding individual tenant signage;
- Utilities serving the common area or those utilities serving all tenants in the Nampa Gateway Center and that are not separately metered to each respective tenant;
- Repair, replacement, surfacing and striping of the parking lot;
- Maintenance and repair of the roofs, exterior walls and canopies, including repainting;
- Maintenance and repair of structural components;
- Painting and cleaning of common area restrooms, floors, ceilings, roofs, skylights and windows;
- Lot sweeping;
- Snow and ice removal;
- Maintenance, repair and replacement of sidewalks, curbs, gutters and other drainage systems and sprinkler systems;
- Installation and maintenance of landscaping, lighting and other utilities;
- Directional signs and other markers and bumpers;
- Maintenance and repair of any fire protection systems, automatic sprinkler systems, lighting systems (including exterior tube and bulb replacement), storm drainage systems and any other utility systems;
- Maintenance, repair and replacement of common area mechanical equipment, including automatic door openers, air conditioning and heating equipment;

- Personnel to implement common area services and to police the common areas;
 - Police and fire protection services;
 - All costs and expenses pertaining to security guards, security alarm devices and security systems for the common areas in the Nampa Gateway Center;
 - Depreciation and maintenance of operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented);
 - Reasonable replacement reserves; and
 - Any reasonable and customary fees paid or assessed by Lessor for management of the Shopping Center; and administrative costs equal to fifteen percent (15%) of the total cost of all the foregoing items.
- e. "Property Damage Insurance" shall mean Lessor's Insurance (hereinafter defined).
- f. "Proportionate Share" shall mean that fraction, the numerator of which is the total gross leasable area leased by Lessee and the denominator of which is the total gross leasable area in the Nampa Gateway Center in which the Premises are located. The parties agree that the applicable fraction is 2,400/480,986 and shall be represented in percentage terms and the parties further agree that this percentage is currently estimated to be 0.50%, subject to modification from time-to-time. If any tenant or occupant of the Nampa Gateway Center shall separately maintain the Common Areas located within its portion of the Shopping Center, separately insure the Common Areas located within its portion of the Shopping Center and/or separately pay the real estate taxes assessed against its parcel, then Lessee's share shall be computed using a denominator that excludes any such portions, as and to the extent applicable.
- 2) From and after the Commencement Date, but subject to adjustment as hereinafter provided, Lessee shall pay Lessor on the first day of each calendar month during the term of this Lease Agreement, Additional Rent in an amount estimated by Lessor to be the Lessee's monthly share of the Nampa Gateway Center's Triple Net Expenses. No later than one hundred eighty (180) days after each calendar year, Lessor shall provide Lessee with a written statement setting forth the amount of Triple Net Expenses paid by the Lessor for the previous calendar year and the Additional Rent payments made by Lessee with respect to such calendar year. If Lessee's share of the Triple Net Expenses exceeds Lessee's payments, Lessor shall submit an invoice for the difference, together with a copy of the tax bill and an itemization of all Common Area Expenses and Property Damage Insurance costs. If Lessee's share of the Triple Net Expenses is less than Lessee's payments, Lessor shall refund the difference to Lessee within thirty (30) days.
- 3) Provided Lessee is not in default of its obligations under this Lease, beyond the lapse of any applicable notice and cure periods, Lessee shall have the right, at its expense, during normal business hours (excluding the calendar months of January, February and March), at a location to be determined by Lessor, and upon thirty (30) days prior written notice to Lessor, to conduct an audit of Common Area Expenses incurred during the immediately preceding twenty-four (24) month period. Lessee shall thereafter supply Lessor with a copy of such audit within fifteen (15) days from receipt thereof. In no event shall such audit be conducted by any (a) former employee of Lessor or Lessor's managing agent, partner or affiliated entity, or (b) any auditor working for a contingency fee or fee based upon Lessee's savings or refund. In the event Lessee's audit shall disclose an overpayment by Lessee of Common Area Expenses actually owed by Lessee, Lessor shall refund such overpayment to Lessee within thirty (30) days of receipt of Lessee's audit, unless Lessor shall in good faith contest the

results of Lessee's audit. In the event Lessee's audit shall disclose an underpayment by Lessee of Common Area Expenses actually owed by Lessee, Lessee shall pay the amount of such undercharge to Lessor within thirty (30) days of receipt of Lessee's completion of such audit. Lessee shall keep any information gained from such audit confidential and such information may be used by Lessee only in dealing directly with Lessor (or as may be required by law, by any court, or any other proceeding pursuant to which Lessee is required to release such information). In the event Lessee shall violate or permit a violation of this covenant, or Lessor reasonably believes that a violation is likely to occur, Lessor shall have the right to exercise all rights and remedies provided in this Lease. No sublessee shall have the right to audit Lessor's records and no assignee of Lessee shall have the right to audit Lessor's records pertaining to years prior to the effective date of such sublease or assignment, as the case may be. Lessee shall be deemed to have waived the right to dispute any matter relating to Lessee's Common Area Expenses if such audit is not conducted within twenty-four (24) months of delivery to Lessee of the billing statement setting forth the exact amount of such costs incurred by Lessor.

- 4) Anything contained herein notwithstanding, failure by Lessor to provide the written statement required in the time frame set forth therein shall be deemed a waiver by the Lessor to any right to obtain any increase in the Rent for that calendar year.
- 5) During the term of this Lease Agreement, following the expiration of the calendar year in which the term of this Lease Agreement shall commence, the Lessee's share of Common Area Maintenance shall not increase by more than seven percent (7%) over the Lessee's share in the previous calendar year on a cumulative basis. The seven percent (7%) limitation shall not be applied to costs expended by Lessor for ice and snow removal, utilities and security.
- 6) The Triple Net Expenses for the first year of the lease are currently estimated to be as follows: a Real Estate Taxes charge of \$1.50 per square foot, per annum, a Common Area Expenses charge of \$1.96 per square foot, per annum, a Replacement Reserve Charge of \$0.10 per square foot, per annum, and a Property Damage Insurance charge of \$0.23 per square foot, per annum.
- 7) In addition to Tenant's contribution for Common Area Expenses, Tenant shall also be required to pay to Landlord an amount equal to the Replacement Reserve Charge set forth above, representing Tenant's contribution for "major repairs" to or replacement of Common Area improvements performed by Landlord subsequent to the Rent Commencement Date. Tenant's contribution to the Reserve Account shall be paid in equal monthly installments during the term of this Lease or any renewals thereof, in advance, on or before the first day of each calendar month. The term "major repairs" shall include, but shall not be limited to repairs to or replacement of parking lot surfaces, sidewalks and utility lines. Funds contributed by Tenant to the Reserve Account shall not be applied to Common Area Expenses, but shall be retained by Landlord until such time as Landlord shall perform a major repair, regardless of the date(s) such amount was contributed by Tenant. In no event shall Tenant be entitled to a refund of the amounts so contributed by Tenant to the Reserve Account.
- 8) If this Lease Agreement begins on any day other than the first day of January or if this Lease Agreement ends on any day other than the last day of December, any additional rent payment due to the Lessor shall be prorated based on the number of days by which such partial year bears to 365.

- D. Option to Renew. Provided Lessee is not in default under this Lease Agreement and is open and operating for business in the Premises, the Lessee shall have one (1) option to renew this Lease Agreement for a period of five (5) years (the "Renewal Term"). The terms and conditions of this Lease Agreement shall apply to the Renewal Term, except the Minimum Rent during the Renewal Term shall increase in accordance with Paragraph 7.B of this Lease Agreement. The Lessee shall give written notice to the Lessor of its intent to renew this Lease Agreement upon these terms no later than one hundred eighty (180) days prior to the expiration of the term of this Lease Agreement.
- E. Property Tax Exemption. Whereas Title 63, Chapter 6, provides an exemption from taxation for that portion of a building used primarily for nonprofit school purposes or charter school purposes, the parties agree to mutually complete an application for property tax exemption and furnish it to the Canyon County Commissioners Office on or before the fourth Monday in June of each calendar year occurring throughout Lessee's occupancy of the Premises. In the event the Canyon County Commissioners approve the property tax exemption, the Lessor shall not bill Lessee for any of its proportionate share of the Real Estate Taxes applicable to the Premises. In the event the Canyon County Commissioners Office denies the property tax exemption during Lessee's occupancy of the Premises, the Lessee agrees to reimburse the Lessor for any taxes billed or penalties assessed against the Lessor as a result of said denial, in an amount to not exceed the credit provided to Lessee.
- F. Proration of Rent and Adjustment of Lease Term Based on Commencement Date. The first month's lease payment shall be based upon the actual Rent Commencement Date. The first month's lease payment shall be divided by the number of calendar days in the month of occupancy, and then multiplied by the number of calendar days in the month that Lessee occupied the Premises.
- G. Rules and Regulations. The Lessee shall observe and comply with, and cause its employees, agents, sublessees and concessionaires, and their employees and agents, to observe and comply with all reasonable rules and regulations promulgated by the Lessor by notice to the Lessee; and such rules and regulations shall have the same force and effect as if originally contained in this Lease Agreement. If the Lessor imposes any rules and regulations, they shall be applied in a non-discriminatory manner to all Shopping Center tenants, however, the Lessee acknowledges that tenants occupying seven thousand five hundred (7,500) square feet or more, non-retail tenants and restaurant tenants may not be subject to the same rules and regulations. The rules and regulations currently applicable to the Shopping Center are set forth on Exhibit E attached hereto and incorporated herein by reference.
- H. Exclusives. The Lessor agrees that during the term of this Lease Agreement, but only for so long as the Lessee is open for business, using the Premises for the Exclusive Use (as hereinafter defined) and is not otherwise in default of any of the provisions of this Lease Agreement, the Lessor will not hereafter enter into a new lease in the Nampa Gateway Center with a tenant whose principal permitted use is the retail sale of Boise State University insignia merchandise (the "Exclusive Use"). The aforementioned restriction shall not apply to: (i) any existing tenants at the Nampa Gateway Center or their successors or assigns; or (ii) any existing leases at the Nampa Gateway Center as same may be renewed, extended, modified or amended (except that no such modification shall grant a tenant the right to engage in the Exclusive Use where such tenant did not previously have that right and the Lessor has the right pursuant to the lease between the Lessor and such tenant to withhold the Lessor's consent to the change in such Lessee's permitted use of such Lessee's premises); or (iii) any new store measuring 5,000 square feet or more; or (iv) the successors, assigns or replacements of any of the foregoing. In the event the Exclusive Use

shall be violated, Lessee shall be entitled to any and all remedies available at law or in equity, except injunctive relief. Notwithstanding anything to the contrary contained herein, in the event the Exclusive Use shall be violated by a lessee or occupant operating in its premises in default of the permitted use provision set forth in such lessee's or occupant's lease or similar occupancy agreement, Lessee shall have no right to terminate the Lease as provided herein so long as Lessor is using commercially reasonable efforts to cure any such default.

- I. Free Rent. Notwithstanding anything contained in this Lease Agreement, provided the Lessee is not in default under the terms and conditions of this Lease Agreement, the first month's payment of Minimum Rent shall be abated.
- J. LID Assessments. Landlord and Tenant acknowledge that Local Improvement District #148 (the "LID") was established to finance certain roadway and infrastructure improvements that serve or are within the Shopping Center. Tenant agrees to pay, concurrently with its payments of Minimum Rent and Additional Rent, its proportionate share of the LID Assessment on the Premises. The LID Assessment may be directly assessed by the City of Nampa or such assessment may be apportioned accordingly by Landlord from the assessment on a larger parcel.
- K. Other Special Provisions. No other special provisions exist.

8. FAILURE TO REPAIR, MAINTAIN OR SERVICE. In the event that the Lessor shall fail or refuse to make such repairs, perform such maintenance, provide such services, or to take any other action required of the Lessor pursuant to this Lease Agreement, Lessee shall give Lessor thirty (30) days' prior written notice and time to cure and, failing such cure within such thirty (30) day period (unless such default cannot be cured by Lessor within such thirty (30) day period, in which event, Lessor shall have such additional time as is reasonably required so long as Lessor commences such cure within such thirty (30) day period and diligently pursues the completion of such cure), Lessee may, at its option, make such repairs, perform such maintenance, provide such services, or take any such action. In the event Lessee properly exercises its self-help right as hereinabove provided, Lessor shall reimburse Lessee the reasonable cost to exercise such self-help right within thirty (30) days of Lessor's receipt from Lessee of copies of invoices and paid checks evidencing the cost of exercising such self-help right. In the event Lessor fails to reimburse Lessee within such thirty (30) day period, Lessee shall have the right to offset the expenses incurred by Lessee in exercising such self-help right against the Rent becoming due under this Lease Agreement (unless the amount of such reimbursement is being reasonably disputed by Lessor in good faith). Lessee's decision to exercise this remedy shall not be deemed to limit its exercise of any other remedy available under this Lease Agreement, at law or in equity.

9. PERSONAL INJURY DAMAGES. Subject to any applicable provisions of the Idaho Tort Claims Act, Lessee agrees to defend and hold Lessor harmless for any and all claims based on proven personal injury damages suffered by public business invitees of the Lessee, provided, however, that Lessee shall have such obligation only for injuries and damages resulting from the negligent acts or omissions of employees of the Lessee and shall have no such obligation related to acts or omissions of employees or invitees of the Lessor.

10. INDEMNIFICATION. Lessor hereby agrees to defend, indemnify and save Lessee harmless from and against any and all liability, loss, damage, cost, and expense, including court costs and attorneys' fees of whatever nature or type, whether or not litigation is commenced, that the Lessee may incur, by reason of any act or omission of the Lessor, its employees or agents or any breach or default of the Lessor in the performance of its obligations under this Lease Agreement. The foregoing indemnity shall not apply to any injury, damage or other claim resulting solely from the act or omission of the Lessee.

11. USE OF PREMISES. Lessee shall use the Premises for the following purposes: the retail sale of Boise State University insignia merchandise and other university products such as non-alcoholic beverages for off-premises consumption (so long as such items are properly packaged), sundries, textbooks or other clothing items that are not Boise State University specific. The Lessee additionally shall be permitted to sell tickets for Boise State University athletic events provided that the Lessee: 1) exercises all commercially reasonable efforts to insure that the formation of lines for ticket sales will not flow into the Common Areas of the Nampa Gateway Center, will not interfere with access to other stores in the Nampa Gateway Center or ingress and egress to and from the Shopping Center, nor disrupt the business of other tenants at the Nampa Gateway Center; 2) at the Lessor's sole discretion, the Lessee will provide security personnel as and when necessary at the Lessee's sole cost and expense; and, 3) the Lessee shall promptly repair any damage caused to the Shopping Center arising in connection with the sale of such tickets. The Premises shall be used for no other use or purpose whatsoever. The Lessee shall initially open for business within the Premises on the Rent Commencement Date, and the Lessee shall keep the Premises open and operating a minimum of forty (40) hours per week (excluding those weeks which contain a state or federal holiday) until the expiration or early termination of the Term of this Lease Agreement. The Lessee will continuously operate its business therein with diligence, fully staffed with personal and fully stocked with merchandise at all times.

12. FIRE OR DAMAGE.

- A. Damage or Destruction Renders Premises Unfit for Occupancy. If, during the term of this Lease Agreement, the Premises, or any portion thereof, shall be completely destroyed or damaged by fire, water, wind or any other cause not the fault of Lessee so as to render the Premises unfit for occupancy by Lessee, this Lease Agreement shall be automatically terminated and at an end, except for any obligations of the Parties that expressly survive the expiration or earlier termination of this Lease Agreement. Lessee shall immediately surrender the Premises to Lessor and shall pay rent only to the time of such surrender.
- B. Some Portion Fit for Occupancy.
 - 1) Notwithstanding any other provision of this Lease Agreement, if less than fifty percent (50%) of the Premises are destroyed or damaged, and if that portion of the Premises may be restored within one hundred twenty (120) days to substantially as good a condition as originally received, the Lessee may elect to continue this Lease Agreement and Lessor shall have the option to restore the Premises. Lessee shall give written notice of its intention to continue this Lease Agreement within thirty (30) days after such damage or destruction occurs. If Lessor does not elect to restore the Premises, the Lessor shall provide the Lessee with written notice of that fact and this Lease Agreement shall automatically terminate effective as of the date of destruction or damage.
 - 2) If the Lessor elects to restore or rebuild pursuant to the option provided in paragraph 12.B.1), the rents otherwise due Lessor by Lessee shall be abated equal to the monthly cost per square foot of the unoccupied Premises for that period of time during which restoration or rebuilding of the Premises occurs. If such restoration or rebuilding exceeds one hundred twenty (120) days beyond the date of the destruction or damage to the Premises, Lessee may terminate this Lease Agreement without liability of any kind save payment for actual occupancy of the Premises prior to termination and any obligations that expressly survive the expiration or earlier termination of this Lease Agreement.
- C. Prepaid Rent. In the event that this Lease Agreement is terminated as the result of damage or destruction to the Premises during any period of its term for which the Lessee has prepaid rent,

the Lessor shall, within thirty (30) days from the date of notification of termination by the Lessee, refund the full amount of any prepaid rent not then applied to a period of the Lessee's actual occupancy of the Premises.

13. ALTERATIONS. Except as otherwise agreed, subsequent to the Effective Date and during the term of this Lease Agreement and any extension, Lessee shall not make any alterations, additions or improvements to the Premises without the prior written consent of the Lessor. Any and all alterations and improvements made by Lessee shall be made at Lessee's sole expense and, subject to the exception for Trade Fixtures provided below, shall, upon termination of this Lease Agreement, and without disturbance or injury, become the property of the Lessor, and shall remain in and be surrendered with the Premises. Any such alterations performed by Lessee must be made in a workmanlike manner, be performed by licensed and insured contractors, must comply with all applicable codes, ordinances, rules and regulations and shall be based upon plans and specifications submitted to the Lessor for the Lessor's prior written consent. In addition, the Lessee shall fully and completely indemnify Lessor, its managing agent, and Lessor's lender against any mechanic's lien or other liens or claims in connection with the making of such alterations. Lessee shall promptly repair any damages to the Premises, or to the buildings of which the Premises are a part, caused by any alterations to the Premises made by Lessee or anyone acting by, through or under Lessee. Notwithstanding any other provision of this Lease Agreement, Trade Fixtures, as defined in this Lease Agreement, installed by Lessee shall not become the property of the Lessor and, upon the termination of this Lease Agreement, the Lessee shall remove such Trade Fixtures and return the Premises in as close to original condition as possible, reasonable wear and tear excepted. For purposes of this Lease Agreement, a "Trade Fixture" is defined as personal property used by the Lessee in the conduct of its business and includes items such as, but not limited to, equipment, furniture, Lessee's signage, shelves and reception counters. If Lessee fails to remove such Trade Fixtures from the Premises prior to the expiration or earlier termination of this Lease, or if Lessee has not fully performed all of the covenants and agreements to be performed by Lessee under the provisions of this Lease, all such Trade Fixtures shall become the property of Lessor. In such event, Lessor shall have the right to remove same and sell such Trade Fixtures to pay for the cost of removal and/or repairs to the Premises. Notwithstanding anything contained to the contrary in this Lease, if Lessee removes such items from the Premises but fails to repair any damage caused by such removal, Lessor may make or complete said repairs without providing Lessee notice prior to the commencement of said repairs. To the extent Lessor exercises self help under this paragraph, Lessee shall reimburse Lessor the cost thereof upon demand, together with the sum of fifteen percent (15%) of said costs for overhead.

14. DEFAULT. If Lessee defaults in the payment of Minimum Rent or other charges and such payment is not made within five (5) days following Lessor's written notice that same is due, or if Lessee shall default in the performance of any other of Lessee's obligations hereunder and Lessee fails to remedy such default within thirty (30) days after written notice from Lessor (unless such default cannot be cured by Lessee within such thirty (30) day period, in which event, Lessee shall have such additional time as is reasonably required so long as Lessee commences such cure within such thirty (30) day period and diligently pursues the completion of such cure), provided that in no event shall Lessor be obligated to provide Lessee with written notice of any default, monetary or otherwise, more than once per calendar year, or if a receiver of any property of Lessee on the Premises is appointed, or Lessee's interest in the Premises is levied upon by legal process, or Lessee be adjudged bankrupt and Lessee fails within thirty (30) days to cause the vacation of such appointment, levy or adjudication, or if Lessee files a voluntary petition in bankruptcy, disposes of all or substantially all of its assets in bulk, or makes an assignment for the benefit of its creditors, then and in any such instance, without further notice to Lessee, Lessor shall have the right to exercise any and all rights or remedies available to Lessor at law, in equity or otherwise, arising from such default, including but not limited to the right to (i) terminate this Lease, or (ii) enter upon the Premises without terminating this Lease and relet the Premises in Lessor's name for the account of Lessee for the remainder of the Lease Term upon terms and conditions reasonably acceptable to Lessor

and immediately recover from Lessee any deficiency for the balance of the Lease Term, plus expenses of reletting. In addition to the foregoing, any time after such default and the lapse of any applicable notice period, Lessor shall have the right to make such payments in default or perform such act in default for the account and at the expense of Lessee, and all unpaid Minimum Rent or other charges which are not paid when due and all sums paid by Lessor pursuant to this sentence, including reasonable attorneys' fees as specifically provided below, shall accrue interest at the annual rate of (i) fifteen percent (15%), or (ii) five percent (5%) above the prime lending rate most recently published by the Wall Street Journal, whichever is greater, which shall constitute Additional Rent under this Lease and shall be payable upon demand.

It shall be a default under and a breach of this Lease by Lessor if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after notice thereof from Lessee; provided, however, that if the term, condition, covenant or obligation to be performed by Lessor is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such occurrence shall not constitute a default if Lessor commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default, Lessee, may pursue any rights or remedies available at law or in equity.

15. SUFFICIENT APPROPRIATION BY LEGISLATURE REQUIRED. It is understood and agreed that the Lessee is a governmental entity, and this Lease Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State legislature as may exist from time to time. The Lessee reserves the right to terminate this Lease Agreement in whole or in part if, in its judgment, the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for Lessee to continue such lease payments, or requires any return or "give-back" of funds required for the Lessee to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending. All affected future rights and liabilities of the Parties shall thereupon cease within thirty (30) days after the notice to the Lessor. It is understood and agreed that the lease payments provided for in this Lease Agreement shall be paid from State legislative appropriations.

16. ASSIGNMENT BY LESSEE – RIGHT TO TERMINATE LEASE AGREEMENT AT DIRECTION OF IDAHO DEPARTMENT OF ADMINISTRATION. The parties to this lease agreement recognize and agree that Lessee, as an agency of the State of Idaho, is subject to the direction of the Idaho Department of Administration pursuant to Title 67, Chapter 57, Idaho Code, and, specifically, the right of that department to direct and require Lessee to remove its operations from the premises and relocate to other facilities owned or leased by the State of Idaho. Accordingly, it is agreed that, upon the occurrence of such event, Lessee may terminate this Lease Agreement at any time after a one (1) year period from the date of the commencement of the Lease Agreement as determined under paragraph 2, provided that Lessor is notified in writing ninety (90) days prior to the date such termination is to be effective. Such action on the part of the Lessee will relieve the Lessee and the State of Idaho of liability for any rental payments for periods after the specified date of termination or the actual date of surrender of the premises, if later. Additionally, the Department of Administration, at its option, upon providing thirty (30) days' written notice to the Lessor, may relocate the Lessee and assign the space to another State agency, department or institution. The provisions of this Lease Agreement will continue in full force and effect upon such assignment by the Department of Administration.

17. OFFICIALS, AGENTS AND EMPLOYEES OF LESSOR AND LESSEE NOT PERSONALLY LIABLE. It is agreed by and between the Parties that in no event shall any official, officer, employee or agent of the Parties be in any way liable or responsible for any covenant or agreement contained in this Lease Agreement, express or implied, nor for any statement, representation or warranty made in or in any way connected with this Lease Agreement or the Premises. In particular, and without limitation of the

foregoing, no full-time or part-time agent or employee of the State of Idaho shall have any personal liability or responsibility for the performance of Lessee's obligations under this Lease Agreement, and the sole responsibility and liability for the performance of Lessee's obligations under this Lease Agreement shall rest in and be vested with the State of Idaho.

18. RELATION OF PARTIES. The Parties agree and acknowledge that neither shall be considered the employer, agent, representative, or contractor of the other by reason of this Lease Agreement.

19. NOTICES. Any notice required to be served in accordance with the terms of this Lease Agreement shall be sent by registered or certified mail, or via overnight courier service that provides a receipt. Any notice required to be sent by the Lessee shall be sent to the Lessor at 3300 Enterprise Parkway, Beachwood, Ohio 44122, Attn: Executive Vice President – Leasing, with copies to Developers Diversified Realty Corporation, 3300 Enterprise Parkway, Beachwood, Ohio 44122, Attn: General Counsel, and any notice required to be sent by the Lessor shall be sent to the address of the Premises and to the Lessee's address in Boise, i.e., 517 West McGregor Court, Boise, Idaho 83705. A copy of any such notice to Lessee shall also be sent to the Department of Administration, Division of Public Works, Attn: State Leasing Manager, Post Office Box 83720, Boise, Idaho 83720-0072 and to Boise State University's legal department at Attn: Office of the General Counsel, 1910 University Drive, Boise, Idaho 83725. In the event of a change of address by either Lessor or Lessee, the Parties agree to notify each other in writing within thirty (30) days of the date of any such change. Notices shall be deemed given upon actual receipt or first rejection.

20. INSURANCE. The Lessor shall maintain a Special Form Cause of Loss Policy (or an equivalent policy that becomes the insurance industry standard in the future) on the Shopping Center improvements constructed by Lessor in an amount equal to at least eighty percent (80%) of the insurable value of such improvements, together with endorsements insuring against such other risks as Lessor deems appropriate (including, but not limited to, earthquake, flood, boiler and machinery, plate glass, power failure, mold, windstorm, terrorism, seepage or leakage and loss of rent) and in such amounts, with such terms and with such insurers, all as Lessor deems appropriate in Lessor's sole discretion. Such insurance shall specifically exclude Lessee's personal property and the interior leasehold improvements, mechanical equipment and permanent fixtures that Lessee is obligated to maintain pursuant to the terms of this Lease. Lessor shall also maintain in full force and effect throughout the Lease Term commercial general liability insurance with regard to the Common Areas with minimum limits of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, Two Million and 00/100 Dollars (\$2,000,000.00) general aggregate, for bodily injury, death and property damage liability. Lessor shall have the right to carry its insurance under "blanket" and/or "umbrella" policies covering the Shopping Center and other properties. Any insurance policies maintained by Lessor may include deductibles, self-insured retentions or the like in amounts determined by Lessor, in Lessor's sole discretion. Lessor shall have the right, but not the obligation, to maintain commercial insurance policies covering some or all of the deductibles, self-insured retentions or the like which are provided in any of Lessor's other insurance policies. The foregoing insurance is collectively referred to herein as "Lessor's Insurance". Any such policy obtained by the Lessor shall be at its sole and absolute expense, and Lessee shall have no obligation to obtain or pay for such insurance, except as set forth in Paragraph 7C above ; provided, however, that Lessee shall have no rights in said policy or policies maintained by Lessor and shall not, by reason of such reimbursement, be entitled to be a named insured thereunder.

The Lessee acknowledges that its personal property is subject to coverage in accordance with state law. Lessee shall ensure all contractors, sub-contractors, vendors, and leased employees are properly insured for workers' compensation. Lessee shall ensure Lessee's contractors performing construction of Lessee's Work, as well as with regard to the construction of alterations shall carry appropriate contingent liability and "all risk" builders' risk insurance.

21. HEIRS AND ASSIGNS. The terms of this Lease Agreement shall apply to the heirs, executors, administrators, successors and assigns of both the Lessor and the Lessee in like manner as to the original parties. In addition to complying with the terms and conditions set forth in Paragraph 16 of this Lease Agreement, any assignment of this Lease Agreement by Lessee must be approved by the State Board of Examiners in accordance with Idaho Code § 67-1027. Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Lessor, that if Lessor shall fail to perform any covenant, term or condition of this Lease upon Lessor's part to be performed and, as a consequence of such default, Lessee shall recover a money judgment against Lessor, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title, and interest of Lessor in the Shopping Center, as the same may then be encumbered, and neither Lessor nor any of its officers or shareholders shall be liable for any deficiency. It is understood that in no event shall Lessee have any right to levy execution against any property of Lessor other than its interest in the Shopping Center as hereinbefore expressly provided. In the event of the sale or other transfer of Lessor's right, title and interest in the Premises or the Shopping Center, Lessor shall be released from all liability and obligations under this Lease.

22. NON-WAIVER. The failure of the Lessor or Lessee to insist upon strict performance of any of the covenants and agreements of this Lease Agreement or to exercise any option contained in this Lease Agreement shall not be construed as a waiver or relinquishment of any such covenant or agreement, but the same shall be and will remain in full force and effect unless such waiver is evidenced by the prior written consent of authorized representatives of the Lessor and Lessee.

23. MODIFICATION. This Lease Agreement may be modified in any particular only by the prior written consent of authorized representatives of the Lessor and Lessee. Anything else contained herein notwithstanding, modifications to this Lease Agreement shall be of no force and effect until approved in writing by the Department of Administration, Division of Public Works.

24. RENEWAL. This Lease Agreement may be renewed by the written consent of the Lessor and Lessee provided such consent is rendered sixty (60) days in advance of the expiration of the term of this Lease Agreement. Notice of Lessor's offer to renew shall be given by the Lessor one hundred twenty (120) days prior to the expiration of this Lease Agreement, including any extension. Lessee will have thirty (30) days to respond to Lessor's offer. If agreement is not reached by sixty (60) days prior to the expiration of the Lease Agreement, Lessor may lease the Premises to another party, but not on more favorable terms than offered to Lessee, without first giving Lessee ninety (90) days to accept or reject those new terms.

25. HAZARDOUS MATERIALS. Lessor represents and warrants to Lessee that, to the best of Lessor's actual knowledge, without further investigation or inquiry, Lessor has not generated, stored or disposed of Hazardous Materials on the Premises or the Shopping Center in violation of applicable laws, rules and regulations. In the event Lessee determines that the foregoing representation and warranty was not accurate in a material respect when made, Lessee shall have the right, as its sole remedy, to terminate this Lease by providing written notice of termination to Lessor, and thereafter neither Lessor nor Lessee shall have any further liability under this Lease. Lessor agrees to indemnify and hold harmless Lessee from all loss, cost, expense and damage (including reasonable attorney's fees) incurred by Lessee as a result of Lessor's breach of the representations and warranties set forth in this paragraph.

Lessee agrees that if any governmental authority having jurisdiction over the Premises requires that remedial action be taken with regard to any Hazardous Material discovered within the Premises or in the Shopping Center subsequent to the date of this Lease, Lessor shall have no obligation to undertake any

remedial action. If Lessor elects to take any remedial action, such remedial action shall be at Lessor's sole discretion and expense. If Lessor does not elect to remediate such condition, Lessee's sole remedy shall be to terminate this Lease within thirty (30) days after the date Lessor elects not to remediate.

In the event Lessee discovers any Hazardous Materials in the Premises, Lessee shall immediately cease any work which may disturb the Hazardous Materials and notify Lessor no later than twenty-four (24) hours after discovery of the presence of Hazardous Materials. Lessee will not be required to remove or otherwise abate any Hazardous Materials which may be in the Premises (including any Hazardous Materials that were in the Premises prior to Lessee's occupancy of the Premises) other than Hazardous Materials which exist as a result of the acts or omissions of Lessee, its employees, agents and/or contractors. If, as a result of the presence of Hazardous Materials in the Premises which are not the result of the acts of Lessee, its employees, agents and/or contractors, Lessee is required by applicable authority to cease its operation at the Premises or Lessee's construction in the Premises or Lessee's opening for business in the Premises is materially interrupted or delayed, then Lessee's Minimum Rent and Additional Rent shall abate for the period of time beginning on the date Lessee is required, by applicable authority, to cease its operations at the Premises or the date Lessee is materially interrupted or delayed in its construction or opening for business to the public at the Premises. Such abatement shall continue until Lessee is authorized by applicable authority to recommence its operation at the Premises, to continue with its construction or to open for business in the Premises.

Subject to the terms, conditions and requirements set forth in Article I.4.A of this Lease, Lessee shall not permit or cause the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center. Lessee shall not permit or cause the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center. Lessee shall defend, protect, indemnify and hold Lessor harmless from and against any and all claims, causes of action, liabilities, damages, costs and expenses, including, without limitation, attorneys' fees, arising because of any alleged personal injury, property damage, death, nuisance, loss of business or otherwise, by Lessor, any employee of Lessor, or from and against any governmental act or enforcement, arising from or in any way connected with conditions existing or claimed to exist with respect to Hazardous Materials within the Shopping Center which are the result of Lessee's use, occupancy or operation of the Premises.

As used herein the term "Hazardous Materials" shall be defined as any hazardous substance, contaminant, pollutant or hazardous release (as such terms are defined in any federal, state or local law, rule, regulation or ordinance, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and other said wastes. In the event Lessee shall cause or permit the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center, Lessee shall promptly, at Lessee's sole cost and expense, take any and all action necessary (as required by appropriate government authority or otherwise) to return the areas affected thereby to the condition existing prior to the presence of any such Hazardous Materials thereon, subject to Lessor's prior written consent. The foregoing covenants shall survive termination of this Lease.

26. NON-DISCRIMINATION. The Lessor and the Lessee each hereby agrees to provide all services funded through or affected by this Lease Agreement without discrimination on the basis of race, color, national origin, religion, sex, age, physical/mental impairment, and to comply with all relevant sections of: Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and The Age Discrimination Act of 1975; and to comply with pertinent amendments to these acts made during the term of this Lease Agreement. The Lessor and the Lessee each further agrees to comply with all pertinent parts of federal rules and regulations implementing these acts. The Lessor and the Lessee each hereby agrees to provide equal employment opportunity and take affirmative action in employment on the basis of race, color, national origin, religion, sex, age, physical/mental impairment, and covered veteran status to the extent required by: Executive Order 11246; Section 503 of the Rehabilitation Act of 1973, as amended; and Section 402 of the Vietnam Era Veterans Readjustment

Assistance Act of 1974; and to comply with all amendments to these acts and pertinent federal rules and regulation regarding these acts during the term of the Lease Agreement.

27. HANDICAP ACCESSIBILITY. To the Lessor's actual knowledge, without further investigation or inquiry, the Premises leased by the Lessee will meet or exceed standards for handicap accessibility as set out in the American National Standards Institute (ANSI A117-1); Americans With Disabilities Act, Americans with Disabilities Accessibility Guidelines (ADAAG) and applicable regulations; the International Building Code; all state-adopted codes and standards; and such federal regulations as may be applicable to the occupying agency.

28. EXECUTIVE ORDER 2005-14. All buildings owned or maintained by any State government agency or entity, or which are constructed or renovated specifically for use or occupancy by any such agency or entity shall conform to all existing state codes, including but not restricted to, the Idaho General Safety and Health Standards, the International Building Code, the International Mechanical Code and the International Fire Code. If any conflict arises between applicable codes, the more stringent code shall take precedence. Prior to construction or remodeling of such buildings, where appropriate, construction plans shall be reviewed and approved by the Division of Building Safety, the State Fire Marshal's Office and the Permanent Building Fund Advisory Council.

29. EXECUTIVE ORDER 2005-12. Executive Order 2005-12 requires that long-term energy costs, including seasonal and peaking demands upon the suppliers of energy, are to be a major consideration in the construction of all State buildings and the execution of lease agreements. Special attention shall include energy conservation considerations including: (i) Chapter 13 of the International Building Code, 2000 Edition; (ii) use of alternative energy sources; (iii) energy management systems and controls to include effective means to monitor and maintain systems at optimal operations; and (iv) "state-of-the-art" systems and equipment to conserve energy economically.

30. EXECUTIVE ORDER 2005-10. Executive Order 2005-10 requires that all State-owned or State-leased buildings, facilities or area occupied by State employees shall be designated as "non-smoking" except for custodial care and full-time residential facilities. The policy governing custodial care and full-time residential facilities may be determined by the directors of such facilities.

31. EXECUTIVE ORDER 2007-05. Executive Order 2007-05 requires state agencies to develop an inventory of greenhouse gas emissions and to implement strategies to reduce greenhouse gases. The Lessor agrees to provide Lessee with ongoing permission to access the utility information of the building to determine the amount of electricity and heating fuel consumed within the Premises. If Lessee is not able to access this information directly from the utility companies, Lessor agrees to furnish said information to Lessee on a calendar year basis at no cost to the Lessor.

32. BROKER. Lessee and Lessor each warrants that, except for any amounts payable by Lessor to Lessor's agent (Mike Pena and Todd Moss of Colliers Paragon LLC), there are no claims for broker's commissions or finder's fees in connection with its execution of this Lease. Lessee and Lessor each agrees to indemnify and save the other harmless from any liability that may arise in connection with any real estate brokers, salespersons, finders, firms or other party claiming by, through or under such party and seeking any commission, fee or payment in connection with this Lease, including reasonable attorneys' fees.

33. MATERIAL REPRESENTATIONS. The Parties agree and acknowledge that the representations and acknowledgments made in this Lease Agreement are material and the Parties have relied upon them in entering this Lease Agreement.

34. SEVERABILITY. If any term or provision of this Lease Agreement is held by the courts to be illegal or in conflict with any existing law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be continued and enforced as if the invalid term or provision were not contained in this Lease Agreement.

35. LESSOR'S RIGHT TO LEASE. The Lessor warrants that it is lawfully possessed of the Premises and has good, right and lawful authority to enter into this Lease Agreement and that, provided the Lessee is not in default under this Lease Agreement, the Lessor shall put the Lessee into actual possession of the Premises on the Delivery Date, subject to Events of Force Majeure (hereinafter defined) and any delays caused by the Lessee, or the Lessee's agents, employees or contractors. Provided Lessee shall perform all the covenants and agreements herein stipulated to be performed on Lessee's part, Lessor shall ensure to the Lessee the sole, peaceable, and uninterrupted use and occupancy of the Premises during the full term of this Lease Agreement and any extension without any hindrance from Lessor or any person or persons lawfully claiming the Premises.

36. MORTGAGES BY LESSOR. Lessee recognizes that Lessor may encumber the Premises by a mortgage(s) or other instrument securing Lessor's obligations to a lender. In such event, the following provisions apply as to the holder of any such mortgage or security instrument and to any person or entity acquiring an interest in the Premises through such mortgage or security interest:

- A. In the event of a foreclosure or acquisition by the holder of such mortgage or security instrument (or by a third party at a foreclosure sale), this Lease Agreement shall continue in full force and effect and the holder or other acquiring party shall be entitled to the benefits of the Lessee's performance under this Lease Agreement and shall have such remedies as are available to the Lessor under this Lease Agreement with respect to any default by the Lessee then existing or thereafter occurring.
- B. Upon written notification to Lessee of a completed foreclosure or other acquisition by the holder or third party purchaser at a foreclosure sale, Lessee will attorn to the acquiring party and shall thereafter perform.
- C. In the event of a foreclosure or acquisition by the holder of such mortgage or other security instrument (or by a third party purchaser at a foreclosure sale), claims by Lessee against the Lessor arising prior to acquisition by the holder or third party purchaser shall not apply to such holder or third party purchaser; provided, however, that this shall not act as a waiver of any rights of Lessee against the Lessor by reason of default under this Lease Agreement existing at the time of such foreclosure sale or other acquisition or thereafter arising, to the extent that such default is not cured under the provisions of this Lease Agreement.

37. ESTOPPEL CERTIFICATE. Lessee agrees, upon reasonable written request, and from time to time, to provide to Lessor an Estoppel Certificate in the form attached hereto as Exhibit F (which may include such additional information reasonably requested by Lessor).

38. COMPLETE STATEMENT OF TERMS. No other understanding, whether oral or written, whether made prior to or contemporaneously with this Lease Agreement, shall be deemed to enlarge, limit or otherwise affect the operation of this Lease Agreement.

39. FORCE MAJEURE. In the event Lessor or Lessee is prevented or delayed in the performance of any improvement or repair or fulfilling any other obligation required under this Lease due to delays caused by fire, catastrophe, strikes or labor trouble, civil commotion, acts of God, governmental prohibitions or regulation, inability or difficulty to obtain materials or other causes beyond the performing

party's reasonable control ("Events of Force Majeure"), the performing party shall, within ten (10) days of the event causing such delay, provide written notice to the other party of the event causing the delay and the anticipated period of delay, and the period of such delay shall be added to the time for performance thereof. The performing party shall have no liability by reason of such permitted delays. In the event the performing party fails to provide notice to the other party of the force majeure delay within such ten (10) day period, the performing party shall not be excused from the timely performance of such obligation regardless of the cause. This provision shall not excuse Lessee from its obligation to pay Minimum Rent and Additional Rent, except when such payment is excused pursuant to other provisions of this Lease.

40. INTENTIONALLY DELETED.

41. INTENTIONALLY DELETED.

42. EMINENT DOMAIN. In the event the Shopping Center or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriate proceedings or by any right of eminent domain, the entire compensation award thereof, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee, shall belong to Lessor, without any deduction therefrom for any present or future estate of Lessee, and Lessee hereby assigns to Lessor all its right, title, and interest to any such award. Lessee shall have the right to recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded to Lessee. In the event of a taking under the power of eminent domain of (i) more than twenty-five percent (25%) of the Premises or (ii) a sufficient portion of the Shopping Center so that after such taking less than fifty percent (50%) of the leasable floor area within all buildings located on the Shopping Center (as constituted prior to such taking) are occupied by Lessees, either Lessor or Lessee shall have the right to terminate this Lease by notice in writing given within ninety (90) days after the condemning authority takes possession, in which event all rents and other charges shall be prorated as of the date of such termination. In the event of a taking of any portion of the Premises not resulting in a termination of this Lease, Lessor shall use so much of the proceeds of Lessor's award for the Premises as is required therefor to restore the Premises to a complete architectural unit and this Lease shall continue in effect with respect to the balance of the Premises, with a reduction of Minimum Rent in proportion to the portion of the Premises taken.

43. INTENTIONALLY DELETED.

44. INTENTIONALLY DELETED.

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as set forth above.

LESSOR:

DDR NAMPA LLC

By: _____

Robin Walker-Gibbons

Its: Executive Vice President

STATE OF OHIO)
)ss.
COUNTY OF CUYAHOGA)

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Robin Walker-Gibbons, known or identified to me to be the person whose name is subscribed to the foregoing instrument on behalf of DDR NAMPA LLC, as the Lessor, and acknowledged to me that she executed the same on behalf of the Lessor.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

Commission expires on: _____

Residing at _____

LESSEE:

THE STATE OF IDAHO, by and through
BOISE STATE UNIVERSITY, DBA BRONCO SHOP

By: _____
_____ (Print Name)

Its: _____

STATE OF _____)
_____)ss.
COUNTY OF _____)

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the person whose name is subscribed to the foregoing instrument on behalf of THE STATE OF IDAHO, by and through BOISE STATE UNIVERSITY, DBA BRONCO SHOP, as the Lessee, and acknowledged to me that he/she executed the same on behalf of the Lessee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

Commission expires on: _____

Residing at _____

APPROVED BY:

Linda S. Miller, State Leasing Manager
Division of Public Works, Department of Administration

Date

**EXHIBIT A TO THE LEASE AGREEMENT
SITE PLAN OF THE PREMISES**

**EXHIBIT B TO THE LEASE AGREEMENT
TENANT IMPROVEMENT SPECIFICATIONS – WORK PROVIDED BY LESSOR
Unit No. F107 2,400 Square Feet**

Lessor's Work shall consist of the following. All other work not specifically listed shall be performed by Lessee at Lessee's expense.

Storefront

Lessor to provide existing storefront system, with addition of double storefront doors centered on the storefront as shown on Exhibit A.

Walls

Construct perimeter demising walls with 6" metal studs and fire taped 5/8" gypsum board. Demising walls to be insulated. Interior partition walls to be constructed of 3-5/8" metal studs with 5/8" gypsum board. Rear and side walls of Sales Areas to receive 12'0" slat wall. Slatwall must have metal inserts in slats. Laminate color to be selected by Lessee. Walls in the Storage Area, Dressing Room, and Restroom to be finish sanded and painted. Front masonry wall segment to be furred, receive 5/8" gypsum board, and be finish sanded and painted. All walls to receive cove base. Lessee to specify paint colors.

Floor

Concrete slab with a smooth troweled finish throughout the space to be stained and sealed. Lessee to specify stain color.

Ceiling

Lessor to construct a suspended t-bar ceiling system at a finished height of twelve feet (12") above floor slab consisting of a standard two-foot (2') by four-foot (4') white metal grid system with standard two-foot (2') by four-foot (4') white lay-in fissured ceiling tiles. T-bar ceiling to be installed in Sales Area and Dressing Room. Storage Room and Restroom to receive gypsum board ceiling at 8'0" height, finish taped, sanded and painted.

Doors

New double three-foot (3') by seven-foot (7') aluminum and glass storefront entry doors to have hydraulic closer, push-pull set, lock cylinder, weather-stripping and threshold. Lessor to also supply interior doors to the dressing room and the storage area. All doors shall be finished or painted.

Plumbing

Lessor to provide the number of restrooms required by the city constructed per local and ADA codes including toilet, lavatory, door with privacy lock, electric water heater, light and exhaust fan. Walls will be finished, sanded and painted gypsum wallboard. Floor will be stained and sealed concrete slab with cove base. Ceiling will be finished, sanded and painted gypsum wallboard at a height of eight feet (8') above floor slab. Handicap grab bars are to be provided. All finishes and accessories such as mirror, paper towel dispenser, toilet tissue holder, and soap dispenser are provided and installed by the Lessor.

Mop sink to be provided in corner of Storage Room as shown on Exhibit A, with 4' tall frp to protect walls from splashing. Gas piping to be provided for HVAC units.

Heating, Ventilation, and Air Conditioning

A combination heating and air conditioning unit(s) sized at approximately one (1) ton of cooling capacity per 350 square feet of floor area, including set-back temperature control device. Air distribution ductwork with supply diffusers and return air grilles set in finished ceiling system. Install an exhaust fan and vent from the toilet room to the exterior for toilet room exhaust.

Electrical

Provide 200amp, three-phase service to an electric panel box (120/208 volt). 277/480volt service with step down transformer may be provided based on available power from local utility service provider.

Electrical distribution consisting of minimum-required duplex outlets, switches, etc., including a circuit for the Lessee's exterior sign and all necessary control and power wiring for HVAC equipment. Wiring shall be run to the exterior of the building to accommodate Lessee's sign and shall include a timer control. Electric breaker panel to be installed in rear corner of the Storage Room, as shown on Exhibit A.

Lessee shall specify its electrical and network box locations.

Lessor to install power pole to cash wrap area. Conduit for telephone/data lines to be installed in Storage Room. Dedicated circuits with isolated ground shall be provided for the computer network file server, telephone equipment, and the fax/copier machine. Equipment will include a fax/copier machine, cash registers, credit card machines, DSL, and 2 computers.

Telephone and Data Cabling

Lessor shall install a conduit with pull string from the Premises to the Telephone Mounting Board, from the telephone mounting board to center of the front register stand. Conduit must not have any 90 degree bends.

Contractor shall pull four parallel runs of standard 4-pair (Type #) twisted pair cable to each outlet for telephone and data communications, label both ends, and terminate each pair at the modular RJ45 duplex jacks (RJ45=568A or B) and at the patch panel block in the data/phone room. Cables shall be tested and certified before occupancy.

Installation and materials supplied shall be in accordance with current Electronic Industry Association/Telecommunication Industry Association standards (EIA/TIA) 568 A or B.

The data/phone area may not be located in the same room as the mechanical, electrical and janitorial room. The data/phone area shall allow access to a 19" standard floor-standing rack assembly. It must have a dedicated electrical circuit for communication and telephone control equipment with a minimum of ten electrical outlets in close proximity to the panel and block. Air-cooling and airflow must allow the area not to exceed a temperature of 72°.

Lighting

Standard two-foot (2') by four-foot (4') four-tube lay-in fluorescent light fixtures with acrylic prismatic lens at approximately one (1) fixture per 80 square feet of floor area. Lessor shall supply track lighting along three perimeter walls of the store. Lessee to provide specifications and locations.

Light switches that independently control lighting to: retail area (1); rear storage area (2); dressing room (1); and restroom (1).

Minimum code-required emergency and exit lights.

Fire Protection

The premises will be protected by an automatic fire suppression sprinkler system with sprinkler heads on a regular grid spacing set in the finished ceiling system. Coverage based on a single story retail occupancy. Install fire extinguishers in the type, quantity, and location as required per local fire authority.

EXHIBIT C TO THE LEASE AGREEMENT

SIGNAGE CRITERIA

EXHIBIT D TO THE LEASE AGREEMENT

BUILDING BUREAU PLAN REVIEW APPLICATION

Division of Building Safety
1090 East Watertower Street
Meridian, ID 83642
Phone: 208.334.3896 / Fax: 208.855.9399

Building Bureau Use Only

P.A.#: _____

Initial Plan Review Fee: \$ _____

Date Received: _____

Receipt #: _____

Applicable codes:

2006 IBC; IECC; and IRC parts I through IV, 2003 IRC parts V & VI, 2003 IMC; 2003 IFGC, 2005 NEC; 2003 UPC

1. Application must include plans, specifications, structural calculations, energy code compliance reports and other pertinent documents. See page two (2) for details on the document quantity and format requirements. All submittal documents must be prepared by an Idaho licensed architect or engineer and include appropriate documentation, stamps and signatures. Include payment of the plan review fee unless other arrangements have been approved by DBS. See the fee schedule on page two (2).
2. Project Owner: _____ Phone: _____
(School District, State Agency or Others)
3. Project Location: _____
(Address, Building Name)
4. Budgeted Project Valuation: \$ _____
5. Architect or Engineer: _____ Phone: _____
Email: _____ Fax: _____
6. Project Description: _____
7. This project includes (check all that apply ☒):
Building construction ☐ - Plumbing ☐ - Electrical ☐ - HVAC ☐ - Elevator/Lift ☐ - Boiler ☐
8. Building Uses: New _____
Existing _____
9. Type of Construction: New - I-A ☐ - I-B ☐ - II-A ☐ - II-B ☐ - III-A ☐ - III-B ☐ - IV ☐ - V-A ☐ - V-B ☐
Existing: - I-A ☐ - I-B ☐ - II-A ☐ - II-B ☐ - III-A ☐ - III-B ☐ - IV ☐ - V-A ☐ - V-B ☐ (check all that apply ☒)
10. Fire walls (Areas Separation Walls): New - YES ☐, NO ☐ Existing - YES ☐, NO ☐
11. Number of Stories: New _____ Existing _____ Basement YES ☐, NO ☐ if yes Area _____ s.f.
12. Building Area: New _____ s.f. - Existing _____ s.f. (exclude basement area)
13. Fire Sprinkler System Throughout: New - YES ☐, NO ☐, Existing - YES ☐, NO ☐
14. The fire sprinkler system is for: fire flow reduction ☐ - allowable area increase ☐ - allowable story increase ☐
1hr fire rated construction substitution ☐ - Other _____
15. Agency Requesting Plan Review: _____
16. Local Government, name of city (or county if out of city) the site is located in: _____
17. Applicant's Name: _____ Date: _____ Phone: _____
(Printed)

Signature _____

EXHIBIT E TO THE LEASE AGREEMENT

RULES AND REGULATIONSLessee agrees:

1. To occupy the Premises in a safe and careful manner and in compliance with all laws, ordinances, rules, regulations and orders of any governmental bodies having jurisdiction over the Premises, and without committing or permitting waste;
2. To neither do nor suffer anything to be done or kept in or about the Premises which contravenes Lessor's insurance policies or increases the premiums therefor. Lessor represents that the Primary Uses do not contravene Lessor's insurance or result in any increased premium;
3. To place no merchandise, sign or other thing of any kind in the vestibule or entry of the Premises or on the sidewalks or other Common Area adjacent thereto;
4. To park Lessee's vehicles and to require all employees to park only in such places as may be designated from time to time by Lessor for the use of Lessee and its employees, and specifically not to permit parking of any Lessee or employee vehicles in any service court area. Lessor reserves to have towed any vehicle parked in violation of this Section at the sole cost and expense of the violating party;
5. To keep any rubbish, garbage and waste generated by Lessee from the Premises in proper dumpsters provided by Lessee adjacent to the Premises or such other area designated by Lessor from time to time until such rubbish, garbage and waste is removed from the Shopping Center and to permit no refuse to accumulate around the exterior of the Premises;
6. To conduct no auction, fire, bankruptcy, liquidation or going-out-of-business, moving, relocating or any other similar sale without the prior written consent of Lessor;
7. To solicit no business in the Common Area, nor distribute handbills or other advertising matter to customers, nor place the same in or on automobiles in the Common Area, nor conduct any promotional activity whatsoever in the Common Area;
8. Except as expressly provided for in the Lease, that Lessee shall make no installations upon nor any penetrations through the roof or the exterior walls of the Premises without the prior written consent of Lessor. Any unauthorized roof installations or penetrations by Lessee shall be subject to immediate removal and repair, at Lessee's sole cost and expense, upon notice from Lessor. Repairs shall be made with materials of equal or better quality and by contractors approved by Lessor;
9. To prohibit the operation of any coin or token-operated vending machines, video games or similar devices outside of the Premises;
10. Lessee shall, at its sole cost and expense, contract for pest extermination services covering the Premises; and
11. Not to permit to be attached or recorded against the Premises or any other portion of the Shopping Center any lien, encumbrance or charge arising out of any work performed or materials furnished by any contractor, mechanic, laborer, or materialman for or at the request of Lessee. Lessee will not enter into any mortgages, conditional sale, security agreement or like instrument nor suffer any other matter or thing whereby the estate, right and interest of Lessor in the Premises or any part thereof might be impaired or diminished. If any lien or notice of lien on account of an alleged debt of Lessee or any notice of contract by a party engaged by Lessee or Lessee's contractor to work on the Premises is filed against the Premises or any part of the Shopping Center, Lessee will, within ten (10) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, letter of credit or other adequate security. If Lessee fails to cause such lien or notice of lien to be discharged within such period, Lessor, its managing agent, or

ATTACHMENT 1

Lessor's lender, may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit, bond or otherwise, and Lessee shall, immediately upon demand, reimburse Lessor, its managing agent, or Lessor's lender for any and all costs and expenses incurred by Lessor, its managing agent, or Lessor's lender, to discharge such lien including, without limitation, all attorneys' fees, court costs and similar expenses. In addition, Lessee shall indemnify and hold Lessor, its managing agent, and Lessor's lender, if any, harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's or its managing agent's cost of defending against the foregoing, such cost to include attorneys' fees) resulting or occurring by reason of any claims or causes of actions that may arise as a result of any lien, notice of lien or, claim relating to work and/or materials furnished to the Premises at the request of Lessee, its employees, agents or contractors.

EXHIBIT F TO THE LEASE AGREEMENT

ESTOPPEL CERTIFICATE

This Estoppel Certificate is made by _____, (hereinafter "Lessee") the lessee of those certain premises located at _____, [_____, Idaho], and described as _____, and leased by Lessee from _____ (hereinafter "Lessor").

NOW THEREFORE, Lessee certifies and represents to Lessor and its successors, mortgagees and assigns and their attorneys, representatives, with respect to the above described lease as follows:

The true, correct and complete copy of the lease, including all amendments or addendum thereto (hereinafter collectively referred to as the "Lease") is attached hereto.

The Lease contains the entire agreement between Lessor and Lessee, and to the best of Lessee's knowledge, as of the date hereof, Lessor is not in default in the performance of the terms and provisions of the Lease.

The Lease is for approximately _____ square feet. The Lease began on _____ and will end on _____.

Lessee has paid all rents due under the Lease for the period through and including _____, and Lessee has paid no other rent or compensation in lieu of rent in advance beyond such date. As of the date hereof, rent due from Lessee to Lessor is in the amount of \$ _____ per month plus such additional rent as called for in the Lease.

DATE: _____

LESSEE

SAMPLE

PERMANENT BUILDING FUND ADVISORY COUNCIL MEETING

Official Minutes, December 7, 2010

A regular meeting of the Permanent Building Fund Advisory Council (PBFAC) was held on this date in Boise, Idaho.

The December 7, 2010, meeting was called to order by Chairman Darrington at 1:40 p.m. in the West Conference Room, Joe R. Williams Building, 700 West State Street, Boise, Idaho.

Council Members Present:

Senator Denton Darrington, Chair
Mr. Dee Jameson
Mr. Randy Steed

Council Members Absent and Excused:

Ms. Gena Russell, Vice Chair
Representative Dennis Lake

Others Present:

Mr. Tim Mason, Administrator, Division of Public Works
Ms. Jan Frew, Deputy Administrator, Division of Public Works
Ms. Susan Drummond, Management Assistant, Division of Public Works
Mr. Barry Miller, Senior Project Manager, Division of Public Works
Mr. John Costner, Project Manager, Division of Public Works
Mr. Ron Hexum, Project Manager, Division of Public Works
Mr. Ben Hill, Project Manager, Division of Public Works
Mr. John Julian, Project Manager, Division of Public Works
Mr. Mark Knowles, Project Manager, Division of Public Works
Mr. Norm Noonan, Project Manager, Division of Public Works
Mr. Ken Gardner, Interim Asbestos/Roofing Program Mgr, Division of Public Works
Ms. Linda Miller, Leasing Program Manager, Division of Public Works

APPROVAL OF MINUTES

MOTION: MR. JAMESON MOVED COUNCIL APPROVE THE NOVEMBER 4, 2010, PERMANENT BUILDING FUND ADVISORY COUNCIL MINUTES. Council passed the motion.

Request for Lease Term Over Five Years**Agency:** BSU Broncoshop**Lessor:** DDR Nampa, LLC**Cost/Sq. Ft. (1st Yr.):** \$16.00**Cost/Yr.:** \$38,400.00**Lease Type:** Triple net lease**Lease Term:** 120 Months (10 Years)**Total Contract Value:** \$435,840.00**Sq. Ft.:** 2,400**City:** Nampa**Address:** Nampa Gateway Center**Cost/Sq. Ft. (Effective):** \$18.16**Escalations:** 3% per year**Space Type:** Retail**Cost Ratio*:** .50

Comments: The Nampa Broncoshop is currently in the Treasure Valley Marketplace. This move will provide BSU with a much larger store and reduce its cost per square foot from \$27.32 to \$16.00 per square foot. The Lessor has additionally agreed to a complete build out of the space, which is unusual in retail leases. BSU is excited about this move, as it will place the Broncoshop next door to the new Idaho Aquarium and close to the new Edwards Theater in Nampa. The longer term lease was necessary to get the landlord to agree to a turnkey tenant finish package.

MOTION: **MR. STEED MOVED COUNCIL APPROVE A TEN-YEAR LEASE TERM FOR THE BOISE STATE UNIVERSITY BRONCOSHOP IN NAMPA. Council passed the motion.**

***Cost Ratio:** The cost ratio measures whether it is more cost effective to lease or to buy buildings. If the cost ratio is below 1.00, acquisition should be considered.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

UNIVERSITY OF IDAHO

SUBJECT

The University of Idaho requests the Board approve the establishment of a self-support fee to fund the operation of a graduate residency program at the McCall Outdoor Science School (MOSS) in McCall, Idaho.

REFERENCE

Idaho State Board of Education Governing Policies & Procedures, Section V.R.3.b.(5)

BACKGROUND/DISCUSSION

Board policy for Self-support certificates and programs provide the following under Board approved local fees:

Self-support certificates and programs are a defined set of specific courses that must all be successfully completed in order to earn the certificate. Such programs must be encapsulated, separate and distinct from the regular courses of the institution. Institutions may offer self-support certificates and programs if the fees assessed cover all costs of the program and no appropriated funds are used to support the program. In addition, students pay a fee for the entire program and may not enroll for program courses on an individual course-by-course basis. Students enrolled in the self-support programs may take courses outside of the program as long as they pay the required tuition and fees for those courses. Institutions will establish such fees on an individual program basis according to anticipated expenditures. Self-support certificate and program fees are retained by the institution.

This request would establish a self-support program fee for the existing graduate residency program at the McCall Outdoor Science School (MOSS) in McCall, Idaho, which culminates in a graduate certificate in Environmental Education. The MOSS program is totally self-sufficient and receives no university or state support for its operation. 100% of the program fee of \$14,222 would be used to support the delivery of the program, including course instruction, mentoring and supervision, and room and board.

IMPACT

Sixteen competitively selected graduate students live, attend classes, and work at MOSS for 9 months. For the final 3 months, they are placed with an agency or organization where they apply what they have learned in their coursework and practicum experiences to the needs of those organizations.

The program has extremely high demand, with 150 applicants for 16 positions this past year. The program currently relies on course fees and off-campus

BUSINESS AFFAIRS AND HUMAN RESOURCES

APRIL 20-21, 2011

course tuition/fees to hire non-tenure track faculty. There has been an inadequate level of tenure-track and Ph.D. level faculty, which limits the perception of program legitimacy in the department, college, and institution. The course fees and tuition would cease with the introduction of the self-support program fee and create a stable funding stream that will allow adequate staffing.

ATTACHMENTS

Attachment 1 – Proposal for McCall Outdoor Science School (MOSS)
Self-Support Program

Page 3

STAFF AND COMMENTS AND RECOMMENDATIONS

Current fees include course fees and teacher in-service fees. The in-service fees are capped in Board policy (one-third of the average part-time undergraduate credit hour fee or one-third of the average graduate credit hour fee) and this program has expanded beyond teachers. In order to get higher paid tenure track faculty and Ph.D.s, UI needs to be able to charge a self-support fee that can grow to meet the market demand for higher salaries.

The University has identified all the required courses in the program, and the fees assessed will cover all costs of the program with no need for appropriated funds.

Staff notes that Board policy on self-support fees is somewhat vague as to whether support fees need annual approval by the Board. Current practice is that these fees are not annually approved. Policy is also unclear as to whether Board approval of a self support program also constitutes approval of the corresponding self support fee. Staff intends to bring clarifying revisions to the policy for Board consideration in June.

Staff recommends approval.

BOARD ACTION

I move to approve the establishment of a self-support fee of \$14,222 per student FTE to fund the operation of a graduate residency program at the University of Idaho McCall Outdoor Science School (MOSS) in McCall, Idaho.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Provost and Executive Vice President

Administration Building, Suite 105

PO Box 443152

Moscow ID 83844-3152

Phone: 208-885-6448

Fax: 208-885-6558

www.provost.uidaho.edu

March 3, 2011

TO: Idaho State Board of Education

FROM: Doug Baker
Provost and Executive Vice President



SUBJECT: Letter of Support

I extend my support and approval for the self support fee request that accompanies this letter from our College of Natural Resources.

This request is for the establishment of a program fee to support the operation of our successful graduate residency program at the McCall Outdoor Science School (MOSS) in McCall, ID, which culminates in a graduate certificate in Environmental Education (Board approved in 2005). MOSS program is totally self-sufficient and receives no university or state support for its operation. 100% of the program fee would be used to support the delivery of the program, including course instruction, mentoring and supervision, and room and board.

Thank you for your consideration of this request.

Program Fee proposal for the Graduate Residency in Environmental Education program at the McCall Outdoor Science School (part of the graduate certificate in Environmental Science Education).

Proposed Starting Date: Fall 2011

College: CNR **Department:** CSS

Contact Name: Steve Hollenhorst **Email:** stevenh@uidaho.edu **Phone:** 885-7911

We are requesting the establishment of a program fee to support its operation. MOSS program is totally self-sufficient and receives no university or state support for its operation. 100% of the program fee would be used to support the delivery of the program, including course instruction, mentoring and supervision, and room and board. This is an existing graduate certificate program, the graduate residency program at the McCall Outdoor Science School (MOSS) in McCall, ID, which culminates in a graduate certificate in Environmental Education.

The MOSS 12-month graduate residency program is part of the existing graduate certificate in Environmental Education. Sixteen competitively selected graduate students live, attend classes, and work at MOSS for 9 months. For the final 3 months, they are placed with an agency or organization where they apply what they have learned in their coursework and practicum experiences to the needs of those organizations. MOSS graduate residents earn 19 hours through graduate coursework and practicum experiences. Upon completion of the program, many of them enter various UI graduate programs, including CSS, Education, Environmental Science, and the Masters of Natural Resources.

MOSS residents are also AmeriCorps members, for which they earn a monthly stipend. Upon completion of the program they receive a \$5,500 educational award that they can apply to the completion of their degree at U-Idaho or other higher education institutions.

The MOSS graduate residency program is an excellent fit with our University, College, and Department mission. In particular, the program is an excellent example of engaged, transformational learning. MOSS graduate residents allow us to deliver the MOSS K-12 program to schoolchildren across Idaho. This program has become one of the largest and most well-known and respected outreach programs at the University. In turn, these graduate students receive coursework in environmental education methods, ecology, and leadership, along with practical experience in science teaching.

University of Idaho

Vision

The University of Idaho is a high research activity, land-grant institution committed to undergraduate and graduate research education with extension services responsive to Idaho and the region's business and community needs. The university is also responsible for regional medical and veterinary medical education programs in which the state of Idaho participates.

The University of Idaho will formulate its academic plan and generate programs with primary emphasis on agriculture, natural resources, metallurgy, engineering, architecture, law, foreign languages, teacher preparation and international programs related to the foregoing. The University of Idaho will give continuing emphasis in the areas of business; education; liberal arts; and physical, life, and social sciences; which also provide the core curriculum or general education portion of the curriculum.

- A) What is the Mission statement of your Department(s)?** Conservation is a social endeavor: initiated by people, designed by people, and intended to influence human behavior to achieve a broad array of environmental and natural resource management goals. The Conservation Social Sciences (CSS)

Department offers B.S., M.S., and Ph.D. degrees in the social dimensions of conservation and environmental issues facing the world today. Students explore social science theory and practice, with a particular focus on our strength areas:

- Parks, Protected Areas, and Wilderness Conservation;
- Environmental Communications (Education, Interpretation, and Communication);
- Conservation Planning and Policy, and
- Conservation Leadership.

Students focus on topics ranging from local community conservation issues to global environmental challenges in the public and private sector. The program fosters interdisciplinary perspectives from psychology, sociology, political science, economics, geography, law, philosophy, ethics, and natural resources to better understand the dynamics of human and social behavior in conservation at all levels.

Your College(s)? The College of Natural Resources is committed to disciplinary and interdisciplinary programs that integrate ecological, social and natural resource science and management systems. Our research, education and outreach sustains people and the land through innovative science, technology and leadership.

State Need and Student Demand for the Program

No changes from current graduate certificate program delivered at MOSS. We're simply asking for a program fee for the program. However, below is demand information about the MOSS component:

The program has extremely high demand, with 150 applicants for 16 positions this past year. It includes a unique 12-month residency experience, including placement in final 3 months with an Idaho community, agency or non-profit organization. It has a strong connection to AmeriCorps. A concern is that we have no base-funded tenure track faculty in McCall. The entire operation is self-supported. MOSS is one of the leading STEM education programs at UI. Strong connections to NSF and other federal funding sources. We also have a unique relationship with Americorps that can grow over time. Approximately 100 graduate students complete these programs annually. We have about 15-20% of the market.

Goals, Objectives, and Student Learning Outcomes

Assessment materials for the existing EE certificate are available at:

<https://vandalweb.uidaho.edu/PROD/owa/uiAssessment.AsHome>

Curriculum

All students in the program are required to take the following courses:

CSS 560 Community Ecology for Environmental Educators (3 cr.)
 CSS 562 Field Science Teaching (2 cr.)
 CSS 563 Place-based Environmental Education (3 cr.)
 CSS 575 Leadership for Environmental Educators (2 cr.)
 CSS 567 Env. Ed Teaching Practicum (2 cr.)

Students

There are approximately 100 students in these types of programs around the U.S. We currently have about a 15-20% share. Last year we had 150 applications for 16 positions. Of the 100+ students who have gone through the MOSS residency program, the vast majority have been successful at getting jobs in their field, getting into graduate school, or both.

The students who apply to the MOSS graduate residency program our graduates of universities around the country. We have a good mix of private and public universities, although graduates of private universities seem to be a higher proportion of applicants. They come from a wide variety of disciplines, from the bio-physical sciences to the social sciences and humanities.

Students are interested in Idaho for several reasons: 1) the attractiveness of the AmeriCorps appointment (i.e. stipend, education award upon completion); 2) the direct connection to the University of Idaho; 3) the beauty of the McCall region, and 4) the reputation of the program.

Our recruitment plan is very simple. First, we advertise on the AmeriCorps recruitment website. This gets us the vast majority of our applicants. Second, we rely on the reputation of the program to attract applicants. Third, we advertise to graduating UI undergraduates. We have a large network of past graduate and professionals who are advocates of our program. We have them organized into email lists and can rely on them to get the word out. Our partners at the AmeriCorps office at Lewis and Clark State College are very important in this regard. We meet with and interact with them regularly. We are very active in various K-12 Science Education professional associations, environmental education associations, and civic organizations in and around McCall and statewide.

Number of Students	Year 1	Year 2	Year 3	Year 2012*
Headcount	16.8	16.8	18.9	
FTE	16.8	16.8	18.9	

Students follow the same application process as all students to the M.S. in Natural Resources, CSS emphasis. The MOSS residency program is a 12-month experience, with 9 months at the McCall Field Campus and 3 months in placement with an Idaho Community, agency, or non-profit organization. All students in the program are advised by our faculty member at MOSS, Karla Bradley, with assistance from Steve Hollenhorst, the MOSS Director. We recruit through AmeriCorp, resulting in a large and diverse applicant pool.

Faculty and Administrative Support

Faculty Name (or "New" if not yet hired)	Rank	Status (part, full, regular, adjunct)	% Effort in Program
Karla Bradley-Eitel	Asst. Prof	Full-time non-tenure track	75%
Jan Eitel	Research Scientist	Full-time	25%
Steve Hollenhorst	Prof., Assoc. Dean	Full-time tenured	10%
Gary Thompson	Staff	Full-time	50%
Greg Fizzell	Staff	Full-time	12.5%
Total FTE Faculty in Program			1.73

Name (or "New" if not yet hired)	Title	Responsibilities	% Effort in Program
Sacha Jackson	Field Campus Manager	Admin, registration, billing	10%
Greg Fizzell	Program Director	Recruitment, marketing	15%
Jenny Schoen	Program manager	Practicum experiences with K-12 program	20%
Total Staff FTE in Program			.45

Strengths

The College of Natural Resources and the Conservation Social Sciences Departments have operated the graduate program in McCall for 8 years. Similar graduate programs exist at other residential environmental science education centers, including Islandwood on Bainbridge Island WA, The Teton Science School in Jackson Hole WY, the North Cascades Institute in Secro-Wooley WA, and Wolf Ridge in Silver Bay MN. The UI program is unique in the nation due to its direct connection with a University. Our competitors all rely on partnerships with universities in order to provide course credit and transcribing. Our situation makes it much easier for students to transition into UI graduate programs. Given the quality of our students (150 applications for 16 positions), MOSS has become a great recruitment mechanism for various UI graduate programs, including the M.S. and MNR in Natural Resources, Environmental Science, Education, and Science.

We are also unique in our partnership with AmeriCorps. All graduate residents at MOSS are AmeriCorps members, for which they receive a \$12K/year stipend, an educational award of \$5,500, and \$300 for professional development travel. We also already have a graduate certificate in environmental science education that all MOSS graduate students receive upon completion of the program.

Lastly, we are unique in our focus on STEM education. No other program has adopted this focus, or received support from NSF and EPA for it.

Concerns

While the MOSS graduate program has significantly increased the graduate student credit hour production of CSS and CNR—approximately 300 graduate SCH/year—we do not have the resources to tenure-track place faculty in McCall to deliver the program. Rather, we rely on course fees and off-campus course tuition/fees to hire non-tenure track faculty.

Because of these staffing difficulties, we have failed to adequately staff the program with tenure-track and Ph.D. level faculty, thereby limiting the perception of legitimacy of the program in the department, college, and institution.

The key reason for this is the lack of available financial support for the program.

Our competitors have tried to deal with this by charging prohibitively high program fees, as high as \$26K/year at some programs. This has limited the size and quality pool of applicants. Our AmeriCorps partnership, along with a more reasonable fee structure, will enable us to continue to attract large, bright applicant pools.

Opportunities

Around the U.S., bright college graduates are deliberately choosing not to go directly into the work place, and instead are dedicating themselves to a year of service through AmeriCorps. For those interested in environmental education, STEM education, and conservation, the MOSS/AmeriCorp partnership is extremely attractive. The prospect of doing this service in Idaho, particularly in the high mountain environment around McCall, is an added competitive advantage.

We are taking advantage of this phenomenon. Last year we had 150 high quality applications for 16 positions. We expect a similar number this year.

But we can do more, by establishing a program fee, we can create a stable funding stream that will allow us to adequately staff the program.

Our competitors are studying and attempting to emulate our model, but thus far have not been able to. This is because of their indirect connect to their university partners, and inability to work through the AmeriCorps logistics. This gives us a few years to leapfrog them and become the best graduate residency program in environmental science education in the U.S.

Finances

II. EXPENDITURES

	FY <u>12</u>		FY <u>13</u>		FY <u>14</u>	
	FTE	Cost	FTE	Cost	FTE	Cost
A. Personnel Costs						
1. Faculty	<u>1.73</u>	<u>\$83,600</u>	<u>1.73</u>	<u>\$86,108</u>	<u>1.73</u>	<u>\$88,691</u>
2. Administrators	<u>.45</u>	<u>\$19,052</u>	<u>.45</u>	<u>\$19,623</u>	<u>.45</u>	<u>\$20,212</u>
3. Adjunct faculty	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>
4. Graduate/instructional assistants	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>
5. Research personnel	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>
6. Support personnel	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>
7. Fringe benefits	<u>2.18</u>	<u>\$42,160</u>	<u>2.18</u>	<u>\$43,425</u>	<u>2.18</u>	<u>\$44,728</u>
8. Other: <u></u>	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>	<u></u>
Total FTE Personnel And Costs;	<u>2.18</u>	<u>\$144,812</u>	<u>2.18</u>	<u>\$149,156</u>	<u>2.18</u>	<u>\$153,631</u>
		FY <u>12</u>		FY <u>13</u>		FY <u>14</u>
B. Operating expenditures						
1. Travel		<u>\$12,000</u>		<u>\$12,360</u>		<u>\$14,322</u>
2. Professional services		<u>\$4,000</u>		<u>\$4,120</u>		<u>\$4,774</u>
3. Other services		<u></u>		<u></u>		<u></u>
4. Communications		<u></u>		<u></u>		<u></u>
5. Utilities		<u></u>		<u></u>		<u></u>
6. Materials & supplies		<u>\$6,000</u>		<u>\$6,180</u>		<u>\$6,949</u>
7. Rentals		<u></u>		<u></u>		<u></u>
8. Repairs & maintenance		<u></u>		<u></u>		<u></u>
9. Materials & goods for manufacture & resale		<u></u>		<u></u>		<u></u>
10. Misc. (Room & Board)		<u>\$63,000</u>		<u>\$64,890</u>		<u>\$76,320</u>
Total Operating Expenditures:		<u>\$85,000</u>		<u>\$87,550</u>		<u>\$102,365</u>

	FY <u>12</u>	FY <u>13</u>	FY <u>14</u>
C. Capital Outlay			
1. Library resources			
2. Equipment			
Total Capital Outlay:			
D. Physical facilities Construction or major Renovation			
E. Indirect costs (overhead)			
GRAND TOTAL EXPENDITURES:	<u>\$229,812</u>	<u>\$236,706</u>	<u>\$255,996</u>
III. REVENUES			
	FY <u>12</u>	FY <u>13</u>	FY <u>14</u>
A. Source of funds			
1. Appropriated funds -- Reallocation – MCO			
2. Appropriated funds -- New – MCO			
3. Federal funds			
4. Other grants			
5. Fees			
6. Other: <u>Program Fee</u>	<u>\$229,812</u>	<u>\$236,706</u>	<u>\$255,996</u>
GRANT TOTAL REVENUES:	<u>\$229,812</u>	<u>\$236,706</u>	<u>\$255,996</u>
	FY <u>12</u>	FY <u>13</u>	FY <u>14</u>
B. Nature of Funds			
1. Recurring*			
2. Non-recurring**	<u>\$229,812</u>	<u>\$236,706</u>	<u>\$255,996</u>
GRANT TOTAL REVENUES:	<u>\$229,812</u>	<u>\$236,706</u>	<u>\$255,996</u>

* Recurring is defined as ongoing operating budget for the program which will become part of the base.

** Non-recurring is defined as one-time funding in a fiscal year and not part of the base.

There are approximately 330 Residential Outdoor Schools in the U.S., of which only one, the UI MOSS program, is in Idaho. These programs are typically 3-5 days in length and serve K-12 school children, primarily 5th and/or 6th graders. Participants typically attend with their entire class and their teacher. Parents often attend as chaperones. The market is usually K-12 schools located within a half-day driving distance of the site, although more prestigious programs attract private or grant funded schools from across the U.S. In states like Minnesota, Wisconsin, California, and Oregon, most 5th or 6th grade students attend such programs and school districts have learned to make attendance part of their curriculum, budgets, and fund raising program. During the summer and school holidays, programming shifts to an array of adult naturalist programs, science camps, conferences, and workshops.

There are five well-established graduate residency programs in the U.S. that are located at residential outdoor schools. These include the Teton Science School, The North Cascades Institute, Islandwood, the Wolf Ridge Environmental Learning Center, and the UI McCall Outdoor Science School.

Teton Science School. The TSS Graduate Program provides a one-year professional residency in the theory and practice of field science, experiential education and leadership skill. The major components of the program include: Graduate level courses in the natural sciences and education; extended practicum experiences in environmental education and interpretation; seminars in professional skills and institutional management; training in outdoor leadership; and instruction in the use of research as an educational tool.

Total Enrollment: approximately 20 student per year.

Cost per credit hour/Total for Certificate and/or Program: \$22,000 for 32 credits and room and board.

Access: face to face.

Faculty to student ratio: Approximately 1:10

Support Services: partnership with Utah State and U. Idaho. Minimal support from these institutions.

How long has this certificate and/or program been offered?: 20 years

What is each program's weakness?: Weak connection to Universities. High cost limits applicant pool. Questionable Rigor of courses.

What is each program's advantage?: Location within Grant Teton National Park. Excellent facilities. Tremendous development and fundraising support.

The North Cascades Institute. In collaboration with Huxley College at Western Washington University, the NCI graduate residency program confers a Master of Education in Environmental Education and a Certificate in Nonprofit Administration and Leadership. Course work explores environmental education while placing an emphasis on field science, cultural studies, teaching and nonprofit administration.

Total Enrollment: approximately 20 student per year.

Cost per credit hour/Total for Certificate and/or Program: \$27,650 for in-state students, \$38,450 for non-residents. Includes 30 credits and room and board.

Access: face to face.

Faculty to student ratio: Approximately 1:9

Support Services: partnership with Western Washington University. Moderate support from WWU.

How long has this certificate and/or program been offered?: 11 years

What is each program's weakness?: Weak connection to University. High cost limits applicant pool. Questionable Rigor of courses.

What is each program's advantage?: Location within North Cascade National Park. Excellent facilities. Fairly easy transition to graduate program at WWU.

Islandwood. The ten-month Graduate Residency in Education, Environment and Community at Islandwood (EEC) is developed in partnership with the University of Washington. The program involves a combination of coursework with practicum teaching experience.

Total Enrollment: approximately 22 student per year.

Cost per credit hour/Total for Certificate and/or Program: \$20,250, includes 34 credits and room and board.

Access: face to face.

Faculty to student ratio: Approximately 1:9

Support Services: partnership with University of Washington. Moderate support from WWU.

How long has this certificate and/or program been offered?: 5 years

What is each program's weakness?: Weak connection to University. High cost limits applicant pool. Questionable Rigor of courses.

What is each program's advantage?: Location on Bainbridge. Excellent facilities. Extremely good fundraising support. Fairly easy transition to graduate program at UW.

Wolf Ridge Environmental Learning Center: In cooperation with the University of Minnesota, Duluth, Wolf Ridge offers a 10 month graduate internship program that trains students to be effective environmental educators. The program includes 18 credits of graduate coursework and practicum teaching experience. Cost: \$3,000 plus UMD tuition (\$8,750 residents, \$15,850 non-residents).

Total Enrollment: approximately 15 student per year.

Cost per credit hour/Total for Certificate and/or Program: \$8,500. Includes 18 credits and room and board.

Access: face to face.

Faculty to student ratio: Approximately 1:9

Support Services: partnership with U. Minnesota Duluth. Moderate support from UMD.

How long has this certificate and/or program been offered?: 15 years

What is each program's weakness?: Weak connection to University. Modest cost helps recruitment.. Questionable Rigor of courses.

What is each program's advantage?: Location within North Cascade National Park. Excellent facilities. Fairly easy transition to graduate program at WWU.

Projected Revenues and Expenses

Summary of Program Costs - Year 2013 - Full Enrollment (Replace "N" with academic year when pgm is expect to reach full enrollment.)						
Line Item	FTE Bnfits %	Internal Reallocation	New State Funds	Other Sources	Total	
Administrative salaries						
Benefits for Administrative	26.9%	0	0	\$28,586		\$28,586
Faculty salaries						
Benefits for Faculty	26.9%	0	0	\$125,044		\$125,044
TA/RA salaries						0
Benefits for TA/RA	30.0%	0	0	0		0
Clerical salaries						0
Benefits for Clerical	30.0%	0	0	0		0
Contract Services						0
Benefits for contract salaries	30.0%	0	0	\$4,774		\$4,774
Goods and services				\$5,252		\$5,252
Travel				\$14,322		\$14,322
Equipment (describe)				\$1,697		\$1,697
Other (describe)				\$76,320		\$76,320
Subtotal	0.00	0	0	\$255,996		\$255,996
Indirect (if applied to pgm)						
Total Cost		0	0	\$255,996		\$255,996
Student FTE						18
Cost per student FTE						\$14,222

Table 5 Salary Cost Detail - Year 1

Name	Monthly salary	# of months	Annual Salary	Buyout Pgm %	Annual Pgm salary
Administration:					
Sacha Jackson	\$3,293	12	\$39,520	0.10	\$3,952
Greg Fizzell	\$4,834	12	\$58,011	0.15	\$8,702
Jenny Schon	\$2,666	12	\$31,990	0.20	\$6,398
Subtotal Administration	\$10,793		\$129,522	0.45	\$19,052
Faculty:					
Karla Bradley	\$5,445	9	\$49,005	0.75	\$36,754
Jan Eitel	\$6,668	9	\$60,008	0.25	\$15,002
Steve Hollenhorst	\$9,353	12	\$112,236	0.10	\$11,224
Gary Thompson	\$2,971	9	\$26,738	0.50	\$13,369
Greg Fizzell	\$4,834	12	\$58,011	0.13	\$7,251
Subtotal Faculty	\$29,271		\$305,998	1.73	\$83,600
TA/RA's:					
Subtotal TA/RA	0		0		0
Clerical staff:					
Subtotal Clerical	0		0		0
Total Year 1	\$40,064		\$435,520	2.18	\$102,652

Table 5 Salary Cost Detail - Year 2013 - Full Enrollment

Name	Monthly salary	# of months	Annual Salary	Buyout Pgm %	Annual Pgm salary
Administration:					
Sacha Jackson	\$3,494	12	\$41,927	0.10	\$4,193
Greg Fizzell	\$5,129	12	\$61,544	0.15	\$9,232
Jenny Schon	\$2,828	12	\$33,939	0.20	\$6,788
Subtotal Administration	\$11,451		\$137,409	0.45	\$20,212
Faculty:					
Karla Bradley Eitel	\$5,777	9	\$51,989	0.75	\$38,992
Jan Eitel	\$7,074	9	\$63,662	0.25	\$15,916
Steve Hollenhorst	\$9,923	12	\$119,071	0.10	\$11,907
Gary Thompson	\$3,152	9	\$28,367	0.50	\$14,183
Greg Fizzell	\$5,129	12	\$61,544	0.13	\$7,693
Subtotal Faculty	\$31,053		\$324,634	1.73	\$88,691
TARA's:					
Subtotal TA/RA	0		0		0
Clerical staff:					
Subtotal Clerical	0		0		0
Total Year 2013	\$42,504		\$462,043	1.73	\$108,903

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

UNIVERSITY OF IDAHO

SUBJECT

Renew ground lease for the Idaho Farmhouse Club, Inc. fraternity

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Policies & Procedures, Section V.I.5.b.1.

BACKGROUND/DISCUSSION

In 1971 the Regents leased a parcel of land to the Idaho Farmhouse Club, Inc. to operate a fraternity at the corner of Blake Ave. and Nez Perce Dr. In September 2011 that lease and its final option term will expire. The fraternity owns the house and improvements on the 0.69 acre leased land.

The attached ground lease will renew Farmhouse's rights to occupy the property and operate a fraternity on Regents' land, through 2051 (40 years) with an option to extend for an additional 40 years (to 2091). The lease has been prepared to ensure that the fraternity will maintain the condition of their property improvements for purposes of providing student housing. The Regents are not obligated in the future to acquire the house, although its re-sale or assignment by Farmhouse Club for uses other than student housing is prohibited without University consent. The ground lease effectively assigns operational and financial risks to the fraternity, and it replaces the \$10 annual rent with a rent fee of \$1,500/yr that acknowledges the value to the university of providing on-campus housing choices for students, while compensating the university for those administrative costs associated with providing public property for private use.

IMPACT

No new financial costs will be imposed on the University of Idaho by this lease renewal.

ATTACHMENTS

Attachment 1 – Proposed Ground Lease
Attachment 2 – Lease Exhibit Map

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STAFF COMMENTS AND RECOMMENDATIONS

This is a request to renew a 40 year lease of real property to the Idaho Farmhouse Club for operation of a fraternity, with an option to renew for another 40 years. The lease stipulates the use, maintenance and insurance requirements of the leased premises. The rent is calculated on a de minimus cost recovery basis.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

The lease provides the tenant an early termination option, but no reciprocating option for the landlord. Staff assumes the University has determined renewal of this long-term lease is the highest and best use of the premises.

Staff recommends approval.

BOARD ACTION

I move to approve the proposed ground lease between the University of Idaho and Idaho Farmhouse Club, Inc. according to the terms submitted to the Board, and to authorize the University's Vice President for Finance and Administration to execute the ground lease in substantial conformance with the draft submitted to the Board as Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

GROUND LEASE

THIS GROUND LEASE (“**Ground Lease**”) is made as of the 1st day of July, 2011, by and between **Idaho Farmhouse Club Inc.**, an Idaho non-profit corporation, and **The Board of Regents of the University of Idaho**, a state educational institution and body politic and corporate organized and existing under the constitution and laws of the state of Idaho.

1. Definitions. The following terms as used in this Ground Lease shall have the meanings hereinafter set forth:

1.1 “Landlord”: The Board of Regents of the University of Idaho, a state educational institution and body politic and corporate organized and existing under the constitution and laws of the State of Idaho.

1.2 “Leased Premises”: That certain real property located in the City of Moscow, County of Latah, State of Idaho, as more particularly described in **Schedule I** attached hereto and incorporated herein by this reference together with all easements, rights and appurtenances thereto but excluding all buildings and improvements located thereon.

1.3 “Lienholder”: Any mortgagee under a mortgage, trustee or beneficiary under a deed of trust, or other secured party under any other form of financing constituting a lien on the Leased Premises.

1.4 “Tenant”: Idaho Farmhouse Club Inc., an Idaho non-profit corporation.

2. Term.

2.1 Initial Term. Landlord leases and Tenant rents the Leased Premises for a term of forty (40) consecutive years commencing on July 1, 2011, and terminating on June 30, 2051.

2.2 Option Term. Tenant shall have one option to extend the term of this Ground Lease to June 30, 2091. To be eligible for such option term, the following conditions must

be met (a) Tenant shall deliver to Landlord written notice of Tenant's election to exercise the extension option on or before February 1, 2051; (b) Tenant shall not be in default of this Ground Lease, after application of all notice and cure periods, both at the time of extension and upon commencement of the option term; and (c) at any time after July 1, 2031 but prior to commencement of the option term, Tenant shall have completed such remodeling, alteration, or improvement of Tenant's building on the Leased Premises (which may be completed in phases) of sufficient magnitude to extend the useful life of Tenant's building to June 30, 2091. In the event Landlord concludes the remodeling, alteration, or improvement of Tenant's building is insufficient to demonstrate the proposed work will effectively extend the useful life of the building to June 30, 2091, Landlord shall identify its concerns relating to the insufficiency in writing and submit those written concerns to Tenant. Tenant shall then provide Landlord with its plans to address Landlord's concerns. All plans will be evaluated in accordance with the procedures in Section 5.2 of this Ground Lease and the standard established in this Section 2.2.

2.3 Tenant's Early Termination Option. Upon at least one year's prior written notice to Landlord, Tenant may at any time during the initial or option term terminate this Ground Lease, so long as Leased Premises and any existing improvements on Leased Premises are surrendered to Landlord in a condition free of any liens, conditions or encumbrances at the time of early termination. Surrender of Tenant's property interests to Landlord by this early termination option shall be subject to Section 16.2 of this Ground Lease.

3. Rent.

3.1 Amount. Tenant shall pay during the initial term of this Ground Lease from and after July 1, 2011 an annual rent in the amount of One Thousand Five Hundred Dollars (\$1,500) per year and, in the event Tenant exercises its option term as provided in Section 2.2 of this Lease, the amount of Two Thousand Five Hundred Dollars (\$2,500) per year during the Option Term (“**Annual Rent**”). Any other amounts due and payable to Landlord from Tenant under this Ground Lease shall be considered rent.

3.2 Delivery and Date of Rent Payments. Annual Rent to Landlord shall be made payable to “Bursar, University of Idaho”, and mailed to the attention of “General Accounting, University of Idaho, PO Box 443166, Moscow ID 83844-3166” or such different address as Landlord shall provide to Tenant by written notice. The initial Annual Rent shall be payable and received on or before July 1, 2011, and each subsequent years’ Annual Rent shall be payable and received on or before July 1 of each subsequent year during the terms of this Ground Lease.

4. Tenant’s Use. Tenant may only use the Leased Premises for the housing of and related services to students enrolled, intending to enroll in the next enrollment period, or planning to continue a course of study beginning as of the next enrollment period at the University of Idaho and which are active members of the Idaho Farmhouse Club Fraternity. Additionally, active members graduating within the past three months but remaining on campus to complete additional professional exams or certifications may continue to occupy Premises, if such occupancy is permitted by Tenant after the active member has graduated. Notwithstanding the foregoing sentence, house directors, resident advisors, caretakers, janitors, and other personnel of a character and number necessarily and customarily involved in the housing of

students shall be permitted to occupy the Leased Premises. No tents, trailers, or shacks shall be permitted on the Leased Premises. Parking shall only be permitted on the Leased Premises in parking areas developed with, and accessible from, paved surfaces of asphalt or concrete. Parking desired by Tenant's occupants or other personnel that is off the Leased Premises, but on adjoining UI property or nearby public or private streets shall be permitted in accordance with the Landlord's "Campus Parking Regulations" as they exist at the time of Ground Lease and as those regulations may be amended from time to time. Tenant shall operate the Leased Premises for the housing of University of Idaho students and active members of Idaho Farmhouse Club Fraternity and shall not permit the improvements on the Leased Premises to be vacated or abandoned, except during university observed holidays or breaks, university closures and cessations of use caused by casualty, condemnation or remodel. Furthermore, Tenant shall use its best efforts to rent one-hundred percent (100%) of the rooms designated for housing to active members of the Idaho Farmhouse Club Fraternity on the Leased Premises during all periods of operation. Failure to have at least twenty members residing on the premises at any given time during spring or fall academic sessions (except in instances of casualty, condemnation or approved remodel or reconstruction requiring temporary cessation of use), may be deemed a Default and subject to the provisions of Article 14 (Default) of this Ground Lease.

5. Alterations and Improvements.

5.1 Alterations. Tenant, at Tenant's sole cost and expense, may remodel Tenant's building on the Leased Premises, according to plans and specifications approved by Landlord (pursuant to Section 5.2 below).

5.2 Approval Procedure. Before any construction, alteration (including, without limitation, color changes and landscaping) or improvement (including, without limitation

parking areas and signs; provided that temporary signs and decorations associated with special events of the students shall be permitted without Landlord's approval but subject to campus regulations) to any building, structure, grounds or any other improvement on or to be located on the Leased Premises is commenced, Tenant shall obtain Landlord's prior written approval from the respective directors of University of Idaho Facilities' Architectural and Engineering Services and, if applicable, Information Technology Services (or functional equivalent of either at the time of construction, alteration or improvement planning). Such approval shall not be unreasonably withheld. Tenant and Landlord hereby agree that Landlord may reasonably withhold approval of any proposed construction, alteration or improvement in order to preserve the architectural character of the campus and neighborhood located on Landlord's nearby property, and that it is reasonable for the Landlord to withhold approval for construction and alterations that are inconsistent with the architectural style existing in similarly used buildings in the neighborhood at the time of Tenant's submission. It shall not be reasonable for Landlord to withhold approval in order to initiate an architectural style not existing in similarly used buildings in the neighborhood at the time of Tenant's submission. When obtaining Landlord's approval, sufficient information shall be sent to Landlord to enable Landlord to make a reasonable decision as to the proposal. Failure of Tenant to receive approval from University of Idaho's Information Technology Services ("ITS"), shall not singularly constitute Landlord's denial of approval to proposed construction, so long as Tenant acknowledges in writing to Landlord that Tenant's failure to receive approval from ITS may result in ITS functions being unavailable for Tenant's improvements to Leased Premises and that certain standards, as specified by ITS, may be required for any installation of information technology infrastructure.

5.3 Diligent Completion. Once any construction, alteration or improvement is commenced, the same shall be continuously and diligently pursued to completion.

5.4 Liens. Except as otherwise permitted in Section 20 (Mortgage), Tenant shall keep the Leased Premises and all improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant or to the Leased Premises. Any work performed, materials furnished or obligations incurred shall be at Tenant's sole request and not at the instance of or as agent for Landlord. Tenant shall, within thirty (30) days after any lien is recorded against the Leased Premises, cause such lien or claim of lien to be released of record or transferred to bond in accordance with Idaho law. If Tenant fails to cause such lien or claim of lien to be released of record or transferred to bond, Landlord shall have the right, at Tenant's expense, to transfer said lien to bond.

5.5 Construction Requirements. Tenant shall comply with and shall require all contractors and subcontractors to comply with all applicable federal, state and local laws, rules and regulations when performing any work on or delivering materials for the Leased Premises and any building, structure or improvement on or serving the Leased Premises, including but not limited to any construction during initial remodeling. All construction shall comply with all applicable federal, state and local laws, rules and regulations and shall comply with the Landlord's design standards as determined by the University of Idaho Facilities' Architectural and Engineering Services. In the event Tenant intends to be eligible for connection to Landlord's telecommunications and network infrastructure, Tenant shall also comply with Landlord's relevant infrastructure standards as defined by ITS at the time of construction. All construction staging shall occur on the Leased Premises, unless a

separate license agreement is granted by Landlord specifying the precise location that staging may occur on the Landlord's nearby property.

6. Maintenance and Restoration of the Leased Premises.

6.1 Maintenance and Repair by Tenant. Tenant shall, at Tenant's sole cost and expense, maintain, repair and replace (except as otherwise permitted in Section 6.3) as necessary in good working condition, reasonable wear and tear excepted, all buildings, structures, and improvements on the Leased Premises (including but not limited to street-side sidewalks within the immediately adjoining public right of way), and maintain, repair and replace as necessary all above and below ground utilities, exclusively serving Tenant's property on the Leased Premises and the extension from the Tenant's property on the Leased Premises to such utility's connection at the main line serving the Tenant's property. Tenant shall, at Tenant's sole cost and expense, keep and maintain the Leased Premises in a good, clean and attractive condition, free from waste and in compliance with all laws, rules, regulations and ordinances, reasonable wear and tear excepted. Tenant shall regularly sweep all paved surfaces and keep the same free of snow and ice. All landscaping on the Leased Premises shall be adequately watered and maintained (including replacement of dead or damaged plants) and Tenant shall replace and maintain such landscaping so as to enhance the overall appearance of the surrounding neighborhood. Any planned changes to landscaping beyond maintenance and replacement of existing plants or materials with the same species or materials, shall be submitted in writing for approval to the Director of the University of Idaho Landscape and Exterior Services (or functional equivalent at the time of the proposed landscaping).

6.2 Maintenance and Repair by Landlord. Landlord shall not be responsible for any maintenance, repair or replacement of the Leased Premises or any building, structure, landscaping, or improvement (including, without limitation, any utility) on the Leased Premises unless such maintenance, repair or replacement is required because of the willful or negligent act or omission of Landlord. Landlord has no obligation to provide fire or police protection for the Leased Premises. In the event Tenant shall fail to complete its obligations under Section 6.1 (Maintenance and Repair by Tenant), after notice and an opportunity to cure as provided for in Article 14 (Default), Landlord may perform the same at Tenant's expense and Tenant shall reimburse Landlord for all costs incurred by Landlord within fifteen (15) days after receipt of an invoice for the expenses.

6.3 Restoration.

(a) In the event any building on the Leased Premises is materially damaged or destroyed by fire or other casualty, Tenant may terminate this Ground Lease by delivering written notice to Landlord within thirty (30) days after the occurrence of such casualty. This Ground Lease shall terminate once Tenant has removed the improvements on the Leased Premises, capped all utilities exclusively serving Tenant's property, graded the Leased Premises in such a manner that drainage from the Leased Premises does not adversely affect the surrounding properties, installed an automatic sprinkler system for that portion of the Leased Premises formerly occupied by Tenant's property and which is equivalent to and ties in with Landlord's sprinkler system for the remainder of the Leased Premises, and covered that portion of the Leased Premises formerly occupied by Tenant's property with sod of an equivalent type used by Landlord on the remaining portion of the leased premises (hydro-seeding shall not be permitted). Tenant shall complete its obligation set forth in the

preceding sentence within sixty (60) days after Tenant has delivered the lease termination to Landlord. In the event Tenant should fail to complete those obligations within such sixty (60) day period, Landlord may perform such obligations at Tenant's expense. In the event Landlord incurs any expenses in performing such obligations, Landlord, in Landlord's sole discretion, shall be entitled to so much of the insurance proceeds payable on account of such casualty as is necessary to reimburse Landlord for Landlord's expenses, and/or to receive payment directly from Tenant if the casualty is caused by an uninsured event.

(b) In the event Tenant does not elect to terminate this Ground Lease after any building on the Leased Premises is materially damaged or destroyed by fire or other casualty, this Ground Lease shall continue in full force and effect, without abatement in Annual Rent, and Tenant shall pursue repair or restoration of the casualty within forty-five (45) days after the casualty, subject to Landlord's approval pursuant to Section 5.2 (Approval Procedure), and shall thereafter diligently pursue the repair or restoration to completion. Any repair or restoration made by Tenant shall return the building to a similar or improved size, function and quality as existed prior to the casualty unless otherwise approved by Landlord in writing.

7. Landlord's Title.

7.1 Fee Title. Landlord covenants that Landlord is the holder of fee simple title to the Leased Premises and that Landlord has full right and authority to enter into this Ground Lease.

7.2 Quiet Enjoyment. Landlord covenants that so long as Tenant is not in default under this Ground Lease, Tenant shall have quiet and peaceful possession of the Leased Premises without unreasonable interference from Landlord.

7.3 Delivery of Leased Premises. Prior to this Ground Lease, Landlord has given Tenant ample opportunity to inspect and test the condition of the Leased Premises and Tenant has occupied said Premises under a ground lease prior to execution of this Ground Lease. Therefore, Tenant takes possession of the Leased Premises in its “AS-IS” condition with all faults, including both latent and patent defects, and Tenant releases Landlord from any and all liability to Tenant relating to any aspect or condition of the Leased Premises, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, LANDLORD AND LANDLORD’S AGENTS ARE NOT MAKING, HAVE NOT MADE AND EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ASPECT, FEATURE OR CONDITION OF THE LEASED PREMISES INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OF HAZARDOUS WASTE, OR THE SUITABILITY OF LEASED PREMISES FOR TENANT’S INTENDED USE. TENANT IS RELYING SOLELY UPON TENANT’S INSPECTIONS AND FAMILIARITY WITH THE PROPERTY AS TO THE CONDITION OF LEASED PREMISES. However, Landlord will make available for Tenant those reports, data and inspections Landlord is aware of related to the purposes of this section and which are in the possession of the Landlord’s Real Estate Office at the time of Landlord’s signature to this Ground Lease.

7.4 Landlord’s Reservations. At Landlord’s sole expense, or as separately agreed to by the affected parties, Landlord reserves the right to install public or private utilities, communication lines and cables and any other services for the benefit of Landlord or Landlord’s surrounding properties on, over, under or through those portions of the Leased

Premises dedicated for public utility lines or otherwise not covered by any building or structure; provided that the installation, operation, repair and replacement of such services does not unreasonably interfere with Tenant's use of the Leased Premises and Landlord repairs any damage done to the Leased Premises caused by the installation, operation, repair and replacement of such services. Landlord reserves the rights-of-way for all utilities communication lines and cables and any other services currently existing on, over, under or through the Leased Premises.

8. Taxes and Assessments. At the present time, because of Landlord's tax status, there are no taxes levied against the Leased Premises. Should property taxes be levied or assessed against the Leased Premises, Tenant agrees to pay prior to delinquency all taxes and assessments, if any, levied or assessed against the Leased Premises or Tenant's personal property thereon during the term of this Ground Lease. In the event any taxes or assessments levied or assessed against the Leased Premises during the term of this Ground Lease may be legally paid in installments, Tenant may pay such taxes or assessments in installments.

9. Utilities. Tenant agrees to pay all charges for electricity, gas, heat, sewer, water, telecommunication infrastructure system, television cable, waste disposal and all other utility services provided for the exclusive use of the Leased Premises during the term of this Ground Lease. Landlord shall not be liable for any interruption in utilities furnished to the Leased Premises, nor does Landlord warrant that any of the utilities mentioned above are available from various utility providers including the Landlord. In the event Landlord provides such services, Tenant shall make separate arrangements with the appropriate university service department and shall pay separately for such services as directed by that department. These service charges are

not included in Annual Rent and provision of services is not an obligation of Landlord under the terms of this Ground Lease.

10. Indemnification and Insurance.

10.1 Tenant's Indemnity. Tenant hereby waives as to Landlord, releases Landlord and agrees to indemnify, defend and hold harmless Landlord from and against any and all liability, claims, damages, expenses (including attorneys' fees and attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring on the Leased Premises during Tenant's tenancy or arising out of Tenant's use or occupancy of the Leased Premises unless caused by a willful or negligent act taken by Landlord on the Leased Premises.

10.2 Liability Insurance. Tenant, at Tenant's sole cost and expense, shall provide and maintain commercial general liability insurance (Occurrence Basis) with broad form coverage endorsement covering its obligations under this Article 10 and insuring it against claims for personal injury, bodily injury or death, and property damage or destruction. Such insurance shall be written with an insurer licensed to do business in the state of Idaho, shall name Landlord as additional insured on ISO Form CG 2026 1185, and contain a waiver of subrogation endorsement in favor of Landlord. The initial limits of liability of all such insurance shall be not less than \$1,000,000 for personal injury or bodily injury or death of any one person, \$1,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000 per occurrence.

10.3 Property Insurance. Tenant, at Tenant's sole cost and expense, shall purchase and maintain Causes of Loss-Special Form (formerly "all risk") Property Insurance (including demolition and increased cost of construction) insuring one hundred percent (100%) of the replacement cost of all improvements, buildings, structures, furniture, fixtures, and equipment located on the Leased Premises. The insurance shall name Landlord as a loss payee, as Landlord's interests may appear under the terms of this Ground Lease, and contain a waiver of subrogation in favor of Landlord.

10.4 Workers' Compensation Insurance. Tenant, at Tenant's sole cost and expense, shall carry Workers' Compensation Insurance as required by Idaho law. No "alternative" forms or self insurance coverage will be allowed.

10.5 Auto Insurance. For any vehicles owned by Tenant, Tenant, at Tenant's sole cost and expense, shall carry Commercial Business Automobile Liability Insurance (Occurrence Basis) with a \$1,000,000 combined single limit coverage. Such insurance shall be endorsed with a waiver of subrogation endorsement in favor of Landlord and include coverage for hired and non-owned vehicles and owned vehicles.

10.6 Insurance Requirements. For all insurance which Tenant is required to maintain hereunder, Tenant shall furnish Landlord with certificates evidencing the insurance. All policies shall be obtained from an insurer licensed to do business in the State of Idaho, with a Best's Rating of "A" or higher and a Financial Size Category of "VIII" or higher. The policies of insurance shall provide that the insurance represented by the certificates shall not be cancelled, materially changed or nonrenewed without the giving of thirty (30) days' prior written notice to the holders of the insurance and the holders of the certificates. No policy will contain a deductible or self-insured retention in excess of \$10,000 without Landlord's

prior written approval. If requested by Landlord, Tenant will promptly deliver to Landlord a certified copy of any insurance policies required by this Lease. If the forms of policies, endorsement, certificates, or evidence of insurance required by this Article 10 are superseded or no longer available or the rating service of insurers is no longer available or modified, Landlord will have the right to require other equivalent or better forms. Furthermore, Landlord shall have the right to adjust the dollar amounts required by this Article 10 from time to time in a reasonable manner. Failure of Landlord to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant's obligation to maintain such insurance. By requiring insurance herein, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Landlord in this Ground Lease.

10.7 Noncontribution. The insurance carried by Tenant hereunder shall be primary and not contributory with any other insurance that is maintained by Landlord.

10.8 Blanket Policy. All insurance which Tenant is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Ground Lease and is endorsed with an Aggregate Limits of Insurance (Per Location) endorsement.

11. Condemnation.

11.1 Termination Right. In the event of a taking of, or damage to, any portion of, interest in or access to the Leased Premises, or any easements, rights or appurtenances thereto by eminent domain or any transfer in lieu thereof or by any other governmental

action, which taking or damage materially and adversely affects Tenant's use of the Leased Premises, Tenant may terminate this Ground Lease as of the date of such taking or damage by written notice to Landlord within three (3) months after the taking or damage deprives Tenant of possession of any such portion of, interest in or access to the Leased Premises, or any easements, rights or appurtenances thereto. In no event will a taking or condemnation of all or any portion of the Leased Premises constitute a default by Landlord under this Ground Lease, including, without limitation, Landlord's covenant of quiet enjoyment. Tenant shall not be entitled to any awards or payments made in the condemnation proceedings as compensation for the loss of its leasehold interests in the Leased Premises. Tenant shall only be entitled to any and all awards or payments made in the condemnation proceedings with respect to any damage to tenant's owned property located on the Leased Premises together with all additions, alterations and improvements thereto, and Tenant's trade fixtures and equipment.

12. Assignment and Subletting. Tenant may not assign this Ground Lease or sublet (other than subletting to individual students enrolled, intending to enroll in the next enrollment period, or planning to continue a course of study beginning as of the next enrollment period at the University of Idaho and which are active members of the Idaho Farmhouse Club Fraternity) the whole or any part of the Leased Premises or any improvements thereon without the prior written approval of Landlord, which approval Landlord may grant or withhold in Landlord's sole and absolute discretion. If Tenant assigns this Ground Lease, Tenant shall remain primarily liable to Landlord for the full performance of Tenant's obligations. Immediately upon any assignment or subletting of any portion of the Leased Premises, Tenant shall provide Landlord with a complete and accurate copy of the assignment or sublease document. No approval of any

assignment or subletting by Landlord shall waive Landlord's right to approve any subsequent assignment or subletting. Should Tenant sublet the Leased Premises for an annual rent in excess of the Annual Rent (other than subletting to individual University of Idaho students as permitted herein), Tenant shall pay the excess annual rent amount to Landlord when received.

13. Compliance With All Laws and Landlord Rules. During the term of this Ground Lease, Tenant's obligations and performance under this Ground Lease shall be consistent with all Landlord regulations and policies and comply with all applicable codes, laws, orders, statutes and regulations of any federal, state, county and municipal authorities that have jurisdiction over the Leased Premises.

14. Default.

14.1 Default Defined. A party shall be deemed to be in default of this Ground Lease only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform the obligations of this Ground Lease unless such party, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such party shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such party is using good faith and its best efforts to rectify the particulars specified in the notice of default and is diligently pursuing the remedy.

14.2 Landlord's Remedies. In the event of a default by Tenant, Landlord may (i) terminate this Ground Lease and re-enter the Leased Premises, (ii) perform or cure any obligation or duty of Tenant under this Ground Lease and any expense incurred by Landlord shall be due and payable by Tenant within fifteen (15) days after receipt of an invoice for the

expenses, or (iii) re-enter the Leased Premises and any improvements thereon without terminating this Ground Lease and sublet the whole or any part thereof for the account of Tenant upon terms and conditions as Landlord, in Landlord's sole and absolute discretion, deems desirable. In the event of sub-item (iii), (a) Landlord shall have the right to collect any rent which may thereafter become due and payable under such sublease and to apply the same first, to the payment of any expenses incurred by Landlord in dispossessing Tenant and in subletting the Leased Premises, and second, to the payment of the Annual Rent herein reserved and to the fulfillment of Tenant's other covenants hereunder, and (b) Tenant shall be liable for amounts equal to the several installments of Annual Rent as they would under the terms of this Ground Lease become due, less any amounts actually received by Landlord and applied on account of rent as aforesaid.

14.3 Non-Waiver. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein.

14.4 Remedies Cumulative. In addition to the remedies set forth in this Ground Lease, Landlord and Tenant shall have all other remedies provided by law or statute to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative.

15. Notices.

15.1 Addresses. All notices given pursuant to this Ground Lease shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below. All notices to Landlord or Tenant shall be sent to the person and address set forth below:

Landlord: Vice President for Finance and Administration
University of Idaho
Moscow ID 83844-3145

Tenant: Idaho Farmhouse Club, Inc
c/o Wayne Wohler
PO Box 1762, Longmont CO 80502-1762

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Ground Lease shall be deemed given upon receipt.

15.2 Receipt. For the purpose of this Ground Lease, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 15.1 as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to Section 15.1, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

15.3 Additional Notices. Landlord and Tenant agree that a copy of all notices given hereunder shall also be given to such other persons and addresses as Landlord or Tenant reasonably may designate in writing to the other party.

16. End of Term.

16.1 Holdover. If the Tenant shall hold over following the expiration of the term of this Ground Lease, such holding over shall be on a month-to-month tenancy under the terms of this Ground Lease.

16.2 Surrender. Tenant agrees that upon termination of this Ground Lease, Tenant shall surrender Leased Premises to Landlord as provided by this Section. Prior to the end of the term Tenant may (i) remove the improvements on the Leased Premises, cap all utilities exclusively serving Tenant's property, grade the Leased Premises in such a manner that drainage from the Leased Premises does not adversely affect the surrounding properties or create hazards at the site, and cover that portion of Leased Premises that is without lawn or adequate landscaping with sod of an equivalent type used by Landlord elsewhere on Landlord's nearby property. This option to undertake such removal shall only be available to Tenant in the event Tenant is not in default and when such action is preceded by written notice to Landlord provided on or before February 1 of the year in which Tenant seeks to surrender Leased Premises. All removal or demolition work described above in this section shall be initiated after June 1 and be completed prior to August 15 of the year in which notice of such surrender is given by Tenant, but in no event after expiration of the term of this Ground Lease, unless another schedule is approved in writing by Landlord. Or (ii), if Tenant chooses not to proceed with demolition or removal of improvements as provided above, Tenant shall surrender the Leased Premises, including any and all improvements thereon, to

Landlord in good condition, reasonable wear and tear excepted, and broom clean. Tenant shall, prior to the date of termination of the Lease, remove from the Leased Premises Tenant's personal property not affixed to the Leased Premises from the Leased Premises and shall repair any damage to the improvements on the Leased Premises caused by such removal. Tenant's failure to remove any of Tenant's personal property shall be deemed an abandonment thereof, whereby title shall become vested in Landlord without further action taken or notice provided. Except as provided by this Section 16.2, Tenant shall not remove from the Leased Premises any improvements, fixtures or equipment affixed to the Leased Premises, unless removal is requested by Landlord in writing prior to the date of termination. Upon termination of this Ground Lease, Landlord may file the Quit Claim Deed attached hereto as Exhibit A and made a part hereof. Tenant agrees to execute and deliver the Quit Claim Deed to Landlord simultaneously with execution of this Ground Lease.

16.3 Survival. The obligations of Landlord and Tenant as set forth in this Section 16 (End of Term) and in Section 10 (Indemnification and Insurance) shall survive termination of this Ground Lease.

17. Estoppel Certificates.

17.1 Certificates. Each party agrees, upon receipt of written request from the other party and provided the requested party do so truthfully, to certify in writing to a prospective assignee, sublessee, purchaser or Lienholder of the requesting party (i) that this Ground Lease is in full force and effect, (ii) that this Ground Lease has not been amended (or, if it has, identifying all such amendments), (iii) that this Ground Lease has not been assigned by the requested party (or, if it has, identifying all such assignments), (iv) that, to the requested party's knowledge, the requesting party is not in default of any of the terms, covenants,

conditions or agreements contained in this Ground Lease (or, if the requesting party is in default, specifying the nature of such default), and (v) such additional facts within the requested party's knowledge as may be reasonably required by the requesting party.

17.2 Waiver. Any certificate issued pursuant to Section 17.1 (Certificates) shall act as a waiver of any claim by the party furnishing it against any such prospective purchaser or Lienholder (but not against the requesting party) to the extent such claim is based upon facts contrary to those contained in the certificate and to the extent such claim is asserted against a bona fide purchaser or encumbrancer for value without knowledge of facts to the contrary of those contained in the certificate and who has acted in reasonable reliance upon such certificate.

18. Attorneys' Fees. In the event either party to this Ground Lease initiates or defends any legal action or proceeding with the other party in any way connected with this Ground Lease, the prevailing party in any such legal action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover from the losing party in any such legal action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). In the event either party to this Ground Lease initiates or defends any legal action or proceeding with a third party because of the violation of any term, covenant, condition or agreement contained in this Ground Lease by the other party to this Ground Lease, then the party so litigating shall be entitled to recover its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal) incurred in connection with such litigation from the other party to this Ground Lease. All such costs and attorneys' fees shall be deemed to have accrued on commencement of any

such legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

19. Recordation of Ground Lease. A memorandum of this Ground Lease acceptable to Landlord and Tenant may be recorded in Latah County, Idaho by Tenant and at Tenant's sole cost. If a memorandum of this Ground Lease is requested by Tenant, Tenant shall execute, acknowledge and deliver to Landlord a Termination of Ground Lease in a form acceptable to Landlord which Landlord may record upon termination of this Ground Lease. A copy of the recorded document or the original document with recording information shall be returned to Landlord at the address given in Section 15 (Notices), but to the attention of the "Real Estate Officer". A memorandum of any subsequent amendment to this Ground Lease (as provided by Section 23.11 of this Ground Lease) acceptable to Landlord and Tenant may also be recorded by Tenant in accordance with the provisions in this Section 19.

20. Mortgage.

20.1 Permitted Encumbrances. Tenant or any assignee or subtenant of Tenant may place a mortgage or deed of trust on any improvements constructed on the Leased Premises and on Tenant's interest in the Leased Premises. Such mortgage or deed of trust shall not encumber Landlord's fee title to the Leased Premises.

20.2 Notices to Lienholder. In the event Tenant is in default under this Ground Lease as defined in Article 14 (Default), Landlord agrees to give written notice of such default to the Lienholder under any such mortgage or deed of trust, provided the name and address of such Lienholder has been furnished to Landlord by Tenant. Landlord shall not terminate this Ground Lease, re-enter the Leased Premises, or exercise any other remedy available at law which would dispossess Tenant of the Leased Premises, provided said Lienholder has cured

said default within the time allowed Tenant for same hereunder or within thirty (30) days (ten [10] days in the event of a failure to pay money) after receipt of said notice of default by said Lienholder, whichever is greater.

20.3 Attornment. Landlord further agrees that, should said Lienholder or its designee acquire Tenant's interest in the improvements constructed on the Leased Premises through a foreclosure of such mortgage or deed of trust or any transfer in lieu thereof, said Lienholder or its designee shall have the right to attorn to Landlord, provided said Lienholder or its designee cures all defaults of Tenant under this Ground Lease existing at the time of such attornment, which are within the power of said Lienholder or its designee to cure, and Landlord will accept such attornment, and said Lienholder or its designee and Landlord shall have the same rights and obligations toward one another which they would have had had this Ground Lease been entered into with Landlord, as Landlord, and said Lienholder or its designee, as Tenant. Landlord agrees to execute any documents reasonably requested by said Lienholder and acceptable to Landlord, in Landlord's sole discretion, in connection with Landlord's obligations under this Article 20.

20.4 Subordination. This Ground Lease, at Landlord's option, shall at all times be subject and subordinate to all and any mortgage, deed of trust or other financing placed on Landlord's fee title interest in the Leased Premises and all extensions, modifications, consolidations, renewals and replacements thereof. Tenant agrees that upon written request by Landlord, Tenant will execute, acknowledge and deliver any and all instruments requested by Landlord which are necessary or proper to effect the subordination of this Ground Lease to any mortgage, deed of trust or financing placed by Landlord on the Leased Premises. Should fee title to the Leased Premises be acquired by any Lienholder in connection with any

proceeding under the terms of any such mortgage, deed of trust or financing arrangement, this Ground Lease shall continue in full force and effect, and Tenant hereby agrees to attorn to such Lienholder. Any prospective Lienholder requesting subordination by Tenant shall enter into a nondisturbance agreement assuring Tenant that so long as Tenant is in compliance with the terms and conditions of this Ground Lease, Tenant's right to continue in possession of the Leased Premises shall not be interfered with.

21. Landlord's Right of Entry. After obtaining Tenant's consent, which shall not be unreasonably withheld or delayed, Landlord and Landlord's agents may enter the Leased Premises and any improvements thereon to (i) inspect the general condition and state of repair of the Leased Premises and any improvements thereon, (ii) show the Leased Premises and any improvements thereon to such persons as Landlord deems reasonably necessary, or (iii) for any other purpose Landlord deems reasonably necessary. In the event of an emergency arising within the Leased Premises or any improvements thereon which endangers property or persons, the consent requirement is waived by Tenant.

22. Conveyance by Landlord. Landlord may sell, assign or otherwise transfer the Leased Premises without the consent of Tenant. Landlord and Tenant agree that the sale of the property to a buyer not in an equivalent tax status with the University, would materially affect the parties' rights under the Ground Lease and each party hereby agrees that prior to any sale to such an entity, Landlord and Tenant will, in good faith, renegotiate paragraph 8, Taxes, and paragraph 3, Rent, prior to such sale. If Landlord should sell or transfer Landlord's interest in the Leased Premises, then effective with the date of the sale or transfer, Landlord's successor in interest shall be fully responsible for all of the terms and conditions expressed in this Ground Lease. If the successor in interest agrees in writing to be bound by all of the terms and

conditions in this Ground Lease, then the Board of Regents of the University of Idaho shall be released and discharged from any and all further obligations and responsibilities under this Ground Lease (except those already accrued).

23. General Provisions.

23.1 Successors and Assigns. All of the provisions contained in this Ground Lease shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

23.2 Partial Invalidity. If any term, covenant, condition or agreement of this Ground Lease or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Ground Lease or the application of such term, covenant, condition or agreement to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition or agreement of this Ground Lease shall be valid and shall be enforced to the extent permitted by law.

23.3 Headings. The captions and headings in this Ground Lease are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

23.4 Entire Agreement. This Ground Lease contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Ground Lease shall be construed as a whole and not strictly for or against any party.

23.5 Gender. In construing the provisions of this Ground Lease and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

23.6 Authority. Each individual executing this Ground Lease on behalf of either party represents and warrants that he or she is duly authorized to execute and deliver this Ground Lease on behalf of said party, in accordance with all agreements of such party and that this Ground Lease is binding upon said party in accordance with the terms hereof.

23.7 Venue. This Ground Lease shall be governed by the laws of the State of Idaho. All legal proceedings under this Ground Lease shall be instituted in the courts of the County of Latah, State of Idaho, and each party agrees to submit to the jurisdiction of such courts.

23.8 Joint and Several Liability. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

23.9 Relationship. The provisions of this Ground Lease are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

23.10 Third Party Beneficiary. This Ground Lease is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

23.11 Amendment. No amendment, modification, release, discharge, or waiver of any provisions hereof shall be of any force, effect, or value unless in writing and signed by Landlord and Tenant.

EXECUTED as of the date first above written.

LANDLORD:

**The Regents of the University of Idaho,
a state educational institution and body
politic and corporate organized and
existing under the constitution and laws of
the state of Idaho**

By: _____
Lloyd E. Mues
Vice President,
Finance and Administration

TENANT:

**Idaho Farmhouse Club, Inc., an Idaho non-
profit corporation**

By: _____
President

ATTEST:

By: _____
Secretary

List of Exhibits & Schedules:

Exhibit A – Quit Claim Deed
Schedule I – Description of Leased Premises

EXHIBIT A

QUITCLAIM DEED FOR IMPROVEMENTS
[EXCLUDING REAL PROPERTY]

THIS QUITCLAIM DEED FOR IMPROVEMENTS is made by THE IDAHO FARMHOUSE CLUB, INC., an Idaho non-profit corporation herein referred to as “**Grantor**,” to and for the benefit of THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, a body politic and corporate organized and existing under the laws and Constitution of the State of Idaho, whose address is Moscow, Idaho 83844-3168, herein referred to as “**Grantee**”:

Grantor, for good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE, and QUITCLAIM, unto Grantee and its successors and assigns forever, all of Grantor’s right title, and interest in and to the real and personal property improvements located on that certain real property described as follows:

A tract of land being portions of Lots 1 and 2, Block 1, of Deakin’s Fourth Addition to the City of Moscow, within the northeast quarter of section 18, Township 39 North, Range 5 West, Boise Meridian, Latah County, Idaho described as follows:

Commencing at the center quarter corner of section 18, from which the south quarter corner of said section bears South 00°04’37” East, 2624.48 feet; Thence North 58°56’37” East, 848.5 feet to the **Point of Beginning**; Thence North 00°04’37” West, 182.3 feet to a point in the southerly curb along Nez Perce Drive; Thence along said curb and the easterly extension thereof, North 89°45’03” East, 166.0 feet, more or less to the west line of Blake Street; Thence along said west line, South 00°04’37” East, 182.3 feet; Thence leaving said west line, South 89°45’03” West, 166.0 feet to the **Point of Beginning**. Containing 0.69 acres, more or less.

THIS CONVEYANCE DOES NOT INCLUDE THE LAND DESCRIBED ABOVE,
ONLY THE REAL AND PERSONAL PROPERTY IMPROVEMENTS LOCATED UPON
SUCH PROPERTY.

Together with all estate, right, title, interest, property, possession, claim and demand
whatsoever, as well as in law as in equity of the Grantor in or to the said improvements, and all
and singular the tenements, hereditaments, and appurtenances thereunto belonging.

[Signature Page Follows]

IN WITNESS WHEREOF, Grantor has hereunto set its hand on the day and year first above written.

GRANTOR: The Idaho Farmhouse Club, Inc., an Idaho non-profit corporation

By: _____
Wayne Wohler, President

[illegible]

On this _____ day of May, 2009, before me, _____, a Notary Public in and for said State, personally appeared Wayne Wohler, known or identified to me to be the President of The Idaho Farmhouse Club, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

Schedule I

A tract of land being portions of Lots 1 and 2, Block 1, of Deakin's Fourth Addition to the City of Moscow, within the northeast quarter of section 18, Township 39 North, Range 5 West, Boise Meridian, Latah County, Idaho described as follows:

Commencing at the center quarter corner of section 18, from which the south quarter corner of said section bears South 00°04'37" East, 2624.48 feet; Thence North 58°56'37" East, 848.5 feet to the **Point of Beginning**; Thence North 00°04'37" West, 182.3 feet to a point in the southerly curb along Nez Perce Drive; Thence along said curb and the easterly extension thereof, North 89°45'03" East, 166.0 feet, more or less to the west line of Blake Street; Thence along said west line, South 00°04'37" East, 182.3 feet; Thence leaving said west line, South 89°45'03" West, 166.0 feet to the **Point of Beginning**. Containing 0.69 acres, more or less.

Lease Exhibit Map
for the University of Idaho
within the NE 1/4 of S18
T39N, R5W, B.M.
Latah County, Idaho

Nez Perce Drive



1"=50'

Blake Avenue

80'

Top of
Curb

Sidewalk

N89°45'03"E
166.0'

FARM HOUSE
0.69 AC

Lot 2, Blk 1
Deakin's Fourth Add.

N00°04'37"W
182.3'

Lot 1, Blk 1
Deakin's Fourth Add.

182.3'

166.0'
S89°45'03"W

N58°56'37"E
848.5'



C1/4 Corner
Section 18

Vacated Baxter Street

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

UNIVERSITY OF IDAHO

SUBJECT

Modify a previous Board approved exchange transaction by 1) removing one parcel from the proposed exchange, and 2) adding ground lease of nearby University (UI) of Idaho property.

REFERENCE

October, 2004
April, 2010

Approved 2005 University/Railroad land exchange
Approved second University/Railroad exchange

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Sections V.I.2.a, V.I.2.g, V.I.5.b(1), V.I.5.b(2), and V.I.5.b(3).

BACKGROUND/DISCUSSION

In April 2010 the Board approved the University of Idaho's proposal to acquire from the Palouse River and Coulee City Railroad (Railroad) recently abandoned railroad segments adjoining University property to the north and east of campus as well as an additional parcel east of campus in exchange for the University's North Campus Center. The transaction is an exchange between the Railroad and the University; however it has always been contingent on the Railroad finding a buyer for the North Campus Center for a sale simultaneously with the exchange closing. In addition, the University has negotiated with the City of Moscow to convey an access easement over a portion of the property the University will acquire from the Railroad.

The Railroad now has its buyer. The buyer's offer for the North Campus Center is \$930,820 – 40.47% of the initial appraisal for the center. The terms of the exchange agreement with the Railroad will adjust the value of the exchange parcels received by the University to this same percentage of original appraisal. The specific figures are set out below.

Based on the University's analysis of the current market and the overall benefit of acquiring the right of way parcels, the amount of the buyer's offer is acceptable to the University.

There are two modifications necessary for a closing with the current buyer.

1. We have now determined that the additional parcel east of campus cannot be secured; however, the Railroad agrees to make up the difference in cash. The modified exchange if approved will result in the acquisition of 5.3 acres (instead of the 6.5 acres originally proposed) in exchange for the University's 1.68 acre North Campus Center.

2. The current buyer for the Railroad seeks a ground lease from the University as a contingency to the purchase of the North Campus Center. The lease parcel is a 0.58 acre parcel adjoining the purchased parcel which makes the whole unit more readily developable as a hotel/conferencing center.

The proposed site lease (Attachment 2) will provide additional property for a privately developed hotel/conferencing facility. The lease rate proposed is \$18,800 per year to the University (the property currently generates about \$4,000 in annual parking permit revenue) and the rent will escalate at a rate of 12.5% every five years over the term of the lease. The property proposed for lease also includes an older building currently used for some University parking service offices and that activity can be re-located to other existing UI office space. The proposed annual income stream from the site lease would be unrestricted revenue and may be applied to development of additional parking or other needs as determined by University administration. The property and any improvements constructed by the tenant will revert to the University at the end of the term and the property may resume its use as University parking or be used in other ways needed at that time.

The University has executed a revised Purchase, Sale, and Exchange Agreement (see Attachment 1). Closing of any exchange transaction under this agreement is contingent upon Regent's approval.

As discussed with the Board in earlier meetings, failure to acquire the abandoned railroad property will eliminate an opportunity to secure ownership of a substantial piece of undeveloped property between the University and downtown Moscow. The inevitable fragmented development will result in the property's conversion to uses that will likely compromise future campus land use and development initiatives. In addition, the exchange permits the disposal of a facility that is obsolete for most University uses and costly to maintain or retro-fit for those uses.

IMPACT

Since there are no budgeted funds available for UI to make the acquisition with cash, the railroad has agreed to accept UI property in exchange for the railroad property desired by UI. The Exchange Agreement provides a mechanism to adjust appraised values for the exchange parcels based on the actual third party sales contract for the North Campus Center and establishes the cash balance payment to the University that is adjusted accordingly as well.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

Closing the exchange based on the current purchaser's offer to the Railroad will result in the following:

- North Campus Center conveyed to Railroad at a value equal to the proposed purchase price (this is 40.47% of the original appraised value of \$2.3 million) \$930,820
- Railroad Exchange parcel (without the lot) conveyed to the University with the value adjusted to 40.47% of original appraisal - \$1,496,000 \$605,542
- Cash Difference to UI \$325,278

In addition, as approved before, the City of Moscow will pay UI \$150,000 for an access and utility easement proposed for a portion of the acquired railroad property within the City's Legacy Crossing urban renewal district.

Finally, the University will initially receive \$18,800 in annual lease payments for the 0.58 acre parking lot that currently generates about \$4,000 in annual permit revenue. The lease amount will escalate at a rate of 12.5% every five years over the term of the lease.

ATTACHMENTS

Attachment 1—Replacement Exchange Agreement
Attachment 2—Draft Site Lease

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STAFF COMMENTS AND RECOMMENDATIONS

This is a revised real property exchange agreement brought by the University of Idaho for Board approval. The salient points of the proposed transaction are described above.

One modification to the agreement since Board approval last year is a proposed five year ground lease of slightly more than one-half acre of University property. A small building housing the campus police substation is currently sited on the property. A ground lease of the property is sought to make the adjoining North Campus Center property more commercially viable. The lease stipulates that at the end of the lease term the property, and any improvements constructed thereon, revert to the University. The Board may want to inquire whether the University is aware if the buyer intends to raze the existing building on the property, what tenant improvements are contemplated, and whether tenant improvements, if any, will benefit the University upon termination of the lease.

Staff finds that based on representations made by the institution, this real property exchange and conveyance of easement is in the best interest of the University. Completing this exchange would enable the University to acquire strategic bordering property and divest a facility which no longer meets institutional needs, without any cash outlay. Staff recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOARD ACTION

I move to approve closing the modified exchange with Palouse River and Coulee City Railroad under the terms of the Replacement Exchange Agreement presented to the Board, and to authorize the University of Idaho to enter into the site lease in substantial conformance to the form submitted to the Board in Attachment 2, and to authorize the University's Vice President for Finance and Administration to execute the necessary documents for the closing and site lease.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

PURCHASE, SALE AND EXCHANGE AGREEMENT

THIS PURCHASE, SALE AND EXCHANGE AGREEMENT ("**Agreement**") is entered into on January 7, 2011, by and between **Palouse River and Coulee City Railroad, Inc.**, a Washington corporation ("**Palouse**"), and the **Board of Regents of the University of Idaho**, a state educational institution and body politic, organized and existing under the Constitution and laws of the state of Idaho ("**Regents**"). It is agreed by the parties that this Agreement terminates and replaces in its entirety the prior "Purchase, Sale, and Exchange Agreement" between these same parties dated January 27, 2010.

1. PROPERTY TO BE PURCHASED BY REGENTS.

Palouse shall sell and Regents shall purchase that certain real property located in the City of Moscow, County of Latah, State of Idaho, consisting of two parcels of land comprising approximately 5.3 acres, as more particularly shown on **Exhibit "A"** attached hereto and made a part hereof, together with all easements, rights and appurtenances thereto ("**Palouse Property**"), all in accordance with the terms and conditions hereinafter set forth. The legal description of the Palouse Property shall be determined by the survey to be obtained pursuant to Section 8(c) and upon such determination shall automatically be made a part hereof.

2. PROPERTY TO BE PURCHASED BY PALOUSE.

Regents shall convey or cause to be conveyed and Palouse shall purchase that certain real property located in the City of Moscow, County of Latah, State of Idaho, consisting of one parcel of land with improvements comprising approximately 1.68 acres, as shown on **Exhibit "A"**, together with all easements, rights and appurtenances thereto ("**Regents Property**"), all in accordance with the terms and conditions hereinafter set forth. Personal property within Regents Property is not included as part of Regents Property.

3. EXISTING EASEMENTS AND LICENSE TO BE TERMINATED.

Parties to this Agreement hereby agree and acknowledge that the prior easement agreement between these same parties dated December 20, 2004, and recorded by the Latah County Recorder, Latah County, Idaho as Instrument Number 495409 on April 27, 2005, and its replacement easement recorded by the Latah County Recorder, Latah County, Idaho as Instrument Number 531331 on July 27, 2009, will be terminated upon execution of conveyance of property as prescribed by this Agreement. Parties to this Agreement further agree and acknowledge that the prior license agreement between these same parties dated December 20, 2004, and recorded by the Latah County Recorder, Latah County, Idaho as Instrument Number 495411 on April 27, 2005, will be terminated upon execution of conveyance of property as prescribed by this Agreement.

Parties to this Agreement hereby agree and acknowledge that the prior easement agreement, between these same parties dated December 20, 2004, and recorded by the Latah County Recorder, Latah County, Idaho as Instrument Number 495410 on April 27, 2005, will be terminated upon execution of conveyance of property as prescribed by this Agreement.

4. LICENSE FOR ENTRY.

Each party hereto grants to the other a license to enter upon the properties subject to this Agreement for all purposes reasonably related to a full and adequate determination of the suitability of the property, including, without limitation, the right to conduct surveys, soils tests, engineering studies, and environmental tests and audits.

5. PURCHASE PRICE AND PURCHASE PRICE ADJUSTMENT.

The purchase price for the Palouse Property is the sum of One Million Four Hundred Ninety-six Thousand Dollars (\$1,496,000). The Purchase Price of the Regents Property is Two Million Three Hundred Thousand Dollars (\$2,300,000). Regents shall pay the purchase price for the Palouse Property by conveying or causing to be conveyed the Regents Property to Palouse. Palouse shall pay the purchase price for the Regents Property by conveying the Palouse Property to Regents. The balance of the purchase price, in the amount of Eight Hundred Four Thousand Dollars (\$804,000), which is the "**Cash Balance Payment**", for purchase of the Regents Property shall be paid in cash by Palouse to Regents at closing.

The purchase price values given above shall be adjusted in accordance with the actual sales price established for the Regents Property by a binding sales contract between Palouse and a third party (as provided in the condition described in Section 8(d) of this Agreement). Such binding sales contract between Palouse and a third party shall be referred to herein as the "**Precedent Sales Contract**". In the event Palouse enters into the Precedent Sales Contract, the purchase prices stated above shall be modified by calculating the percentage difference between the agreed price of the Precedent Sales Contract and the \$2,300,000 reported above. For example, if the Precedent Sales Contract establishes an agreed upon price of \$2,070,000 then the purchase prices and Cash Balance Payment amounts reported above shall be adjusted to 90% of the amount reported above (\$2,070,000 is 90% of \$2,300,000). In the event the Precedent Sales Contract includes the "Palouse Adjoining Parcel" (the parcel adjoining Regents Property as shown on Exhibit A), the total reported sales price for the combined parcels shall be allocated between the Regents Parcel and the Palouse Adjoining Parcel such that the Regents Parcel is assigned 84.62% of the total sales price to permit the adjustment as provided above.

6. MUTUAL CONDITIONS.

Notwithstanding anything to the contrary in this Agreement, neither party shall be obligated to purchase the respective properties unless at or prior to closing each of the following conditions has been met or both parties have waived said conditions in writing. Each party agrees to reasonably cooperate with the other to execute any documents, which may be necessary or convenient to the performance of these conditions:

(a) Palouse and Regents have entered into, and Palouse and Regents agree to enter into those documents (if any) deemed necessary to terminate the easements and license described in Section 4 of this Agreement. An executed termination document related to that Easement dated December 20, 2004, and recorded by the Latah County Recorder, Latah County, Idaho as Instrument Number 495410 on April 27, 2005, (the form of which termination document is attached hereto as **Exhibit "B"**) shall be deposited by Palouse into the escrow referred to in Section 10 with instructions that the same be recorded immediately after the

recording of the quitclaim deeds conveying the Palouse Property to the Regents and the Regents Property to Palouse.

(b) Palouse and Regents have entered into, and Palouse and Regents agree to enter into those quitclaim deeds necessary to convey Palouse Property to Regents and Regents Property to Palouse as described in Sections 1 and 2 of this Agreement ("**Exchange Quitclaim Deeds**") and then deposit said Exchange Quitclaim Deeds into the escrow referred to in Section 9 with instructions that same be recorded at closing.

(c) In the event either party, at any time prior to waiver or satisfaction of such conditions, deems any of the conditions set forth in this Section 6, or, in the case of Palouse, Section 7, or, in the case of Regents, Section 8, unsatisfied, such party may terminate this Agreement upon fifteen (15) days' prior written notice to the other and this Agreement shall terminate. Notwithstanding any of the foregoing, neither party shall have the right to terminate this Agreement if such party is in default under this Agreement. In the event of any such termination of this Agreement, both parties shall be released from any further obligations hereunder except for liabilities, actual or contingent, which arose prior to the date of termination.

7. PALOUSE CONDITIONS.

Notwithstanding anything to the contrary in this Agreement, Palouse shall not be obligated to purchase the Regents Property unless at or prior to closing each of the following conditions has been met or Palouse has waived said conditions in writing. Regents agrees to reasonably cooperate with Palouse to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) Palouse has entered into such agreements and received the necessary approvals, specifically including any applicable approvals from the U.S. Surface Transportation Board, to permit Palouse to abandon the railroad on the Palouse Property.

(b) Palouse has executed the Precedent Sales Contract with a third party to purchase Regents Property. Although the Precedent Sales Contract to purchase Regents Property shall be contingent upon the closing of transactions prescribed by this Agreement, Regents shall not be a party to the Precedent Sales Contract. The agreed upon sales price for the Precedent Sales Contract (if any) shall be disclosed in writing by Palouse to Regents and consented to in writing by Regents to permit the purchase price adjustment described in Section 5 of this Agreement. If Palouse, in its sole discretion, waives in writing this condition of sale to a third party, and decides to retain Regents Parcel as the outcome of the exchange, there shall be no purchase price adjustment as provided in Section 5 of this Agreement.

(c) Title to the Regents Property shall be good and marketable and shall be free and clear of all liens, encumbrances, easements, assessments, restrictions, tenancies (whether recorded or unrecorded) and other exceptions to title, except easements of record at the date of closing, and except the lien of real property taxes not yet due and payable and those exceptions approved in writing by Palouse ("**Palouse Permitted Exceptions**").

(d) Escrow Holder shall be prepared to obtain from Latah County Title Company, a standard coverage ALTA Owner's Policy of Title Insurance (including any endorsements

reasonably required by Palouse) in the amount of \$2,300,000 (or such adjusted amount as described in Section 5 of this Agreement), insuring that marketable fee simple title to the Regents Property is vested in Palouse, subject only to the Palouse Permitted Exceptions.

(e) Palouse has obtained or been provided with such surveys, soils tests, engineering studies, and environmental tests and audits, which shall show the Regents Property to be suitable to Palouse, in Palouse's sole opinion. All surveys, tests, studies, or audits required by Palouse shall be paid for by Palouse at Palouse's sole cost and expense.

(f) Palouse will remove within twelve months from the date of closing the railroad tracks, ties, associated equipment and any other personal property not attached to the Palouse Property from all portions of the Palouse Property. Palouse shall indemnify, defend, and save Regents, its successors assigns, and agents harmless from any and all claims liabilities, losses, costs, charges, or expenses (including without limitation reasonable attorneys' fees) which Regents may incur as a result of Palouse' personal property remaining after closing, except to the extent caused by the negligence, willful misconduct or breach of contract by Regents or their agent, officer, employee, contractor or director. Notwithstanding Regents' or Palouse's waiver of these conditions subsequent, the obligations and indemnification set forth in this paragraph shall survive closing and the termination of this agreement, and shall continue so long as Palouse's personal property remains on the subject real property.

(g) Palouse shall have approved the closing of this transaction and more particularly the Board of Directors of Palouse shall have specifically and finally approved the terms of this transaction in accordance with their policies and procedures.

8. REGENTS CONDITIONS.

Notwithstanding anything to the contrary in this Agreement, Regents shall not be obligated to purchase the Palouse Property unless at or prior to closing each of the following conditions has been met or Regents has waived said conditions in writing. Palouse agrees to reasonably cooperate with Regents to execute any documents, which may be necessary or convenient to the performance of these conditions:

(a) Title to the Palouse Property shall be good and marketable and shall be free and clear of all liens, encumbrances, easements, assessments, restrictions, tenancies (whether recorded or unrecorded) and other exceptions to title, except those exceptions approved in writing by Regents ("**Regents Permitted Exceptions**").

(b) Escrow Holder shall be prepared to obtain from Latah County Title Company/First American Title Insurance Company, a standard coverage ALTA Owner's Policy of Title Insurance (including any endorsements reasonably required by Regents) in the amount of \$1,496,000 (or such adjusted amount as described in Section 5 of this Agreement), insuring that marketable fee simple title to the Palouse Property is vested in Regents, subject only to the Regents Permitted Exceptions.

(c) Regents has obtained or been provided with such surveys, soils tests, engineering studies, and environmental tests and audits, which shall show the Palouse Property to be suitable to Regents', in Regents' sole opinion. Without limiting the generality of the foregoing, Palouse, at Palouse's cost and expense, shall have provided Regents with a legal description and land survey for the Palouse Property. Upon acceptance of the legal descriptions by Regents, such legal descriptions shall become a part of this Agreement without further action by either party. All surveys, tests, studies, or audits (aside from the legal description and land survey mentioned above in this section) required by Regents shall be paid for by Regents at Regents' sole cost and expense.

(d) Regents has approved the closing of this transaction and more particularly the Board of Regents of the University of Idaho have specifically and finally approved the terms of this transaction in accordance with their policies and procedures.

(e) Regents has consented to Precedent Sales Contract and therefore permitted the purchase price adjustment as described in Section 5 of this Agreement.

9. ESCROW HOLDER.

Prior to closing, the parties shall open an escrow with Latah County Title ("**Escrow Holder**"). After all of the conditions of closing as set forth in Sections 6 and 7 have been met or waived, Palouse shall deposit into escrow duly executed and acknowledged quitclaim deeds conveying the Palouse Property to Regents, subject only to those exceptions specifically approved in writing as the Regents Permitted Exceptions, together with instructions to deliver and record the quitclaim deeds when (a) Escrow Holder is in a position to transfer the Regents Property to Palouse, subject only to the Palouse Permitted Exceptions, and (b) recordation of easement termination described in Section 6(a) of this Agreement. After all of the conditions of closing as set forth in Sections 6 and 8 have been met or waived, Regents shall deposit into escrow a duly executed and acknowledged quitclaim deed conveying the Regents Property to Palouse, subject only to the Palouse Permitted Exceptions together with instructions to deliver and record the quitclaim deed when Escrow Holder is in a position to transfer the Palouse Property to Regents, subject only to the Regents Permitted Exceptions.

10. CLOSING.

Closing shall be the date on which the Exchange Quitclaim Deeds are recorded which shall be as soon as practicable after all conditions set forth in Sections 7, 8 and 9 have been satisfied or waived. Possession passes to each respective party on closing. Closing shall not occur later than to May 1, 2011, unless approved by both parties in writing.

11. SECTION 1445 AFFIDAVIT.

At or prior to closing, Palouse shall deliver to Regents an affidavit in compliance with Section 1445 of the Internal Revenue Code providing Palouse's United States taxpayer identification number and business address and stating whether or not Palouse is a "foreign person" as defined in the Internal Revenue Code and regulations applicable thereto ("**Code**"). If Palouse fails to deliver such affidavit or is a "foreign person" as defined in the Code, Regents shall be entitled to withhold from the purchase price, and to pay to the Internal Revenue

Service, such amounts as are required to be withheld by the Code, and Palouse agrees to cooperate with Regents and to furnish Regents with such tax forms and information as are reasonably required to insure Regents' compliance with the Code.

12. COSTS.

Escrow fees, title insurance premiums for issuance of standard owner's policies of title insurance as required by Sections 7(d) and 8(b) and recording fees for all deeds and easement terminations for each parcel shall be paid by the party acquiring that specific property. Taxes, rentals and utilities shall be prorated as of the time of closing. Regents is a tax exempt entity and the Regents Property is not currently subject to property taxation. As such, property taxes shall not be prorated for the Regents Property and Palouse shall be responsible for all property taxes charged against the Regents Property after the date of closing.

13. COMMISSIONS.

Each party represents and warrants that it has not dealt with or contracted with any broker, agent or finder to act in their behalf in connection with this transaction except for Shelley L. Bennett, Palouse Commercial Real Estate ("**Broker**") who was retained by Palouse. Palouse agrees that it shall be solely responsible for all brokerage commissions and fees due to Broker and that said commissions and fees shall be paid by Palouse from the purchase price out of escrow.

14. REPRESENTATION CONFIRMATION.

Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with Regents and Palouse.

Section 1:

- ☐ The brokerage working with Regents is acting as an AGENT for Regents.
- ☐ The brokerage working with Regents is acting as a LIMITED DUAL AGENT for Regents, without an ASSIGNED AGENT.
- ☐ The brokerage working with Regents is acting as a LIMITED DUAL AGENT for the Regents, and has an ASSIGNED AGENT acting solely on behalf of Regents.
- ☒ The brokerage working with Regents is acting as a NONAGENT for Regents.

Section 2:

- ☒ The brokerage working with Palouse is acting as an AGENT for Palouse.
- ☐ The brokerage working with Palouse is acting as a LIMITED DUAL AGENT for Palouse, without an ASSIGNED AGENT.
- ☐ The brokerage working with Palouse is acting as a LIMITED DUAL AGENT for Palouse, and has an ASSIGNED AGENT acting solely on behalf of Palouse.

[] The brokerage working with Palouse is acting as a NONAGENT for Palouse.

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review.

EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKER UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

Listing Agency: Palouse Commercial Real Estate.
Selling Agency: None
Responsible Broker: Shelley L. Bennett

15. PROPERTIES SOLD AS-IS.

The provisions of this Section 15 shall survive closing. Each party is relying solely upon such party's inspections as to the condition of properties. Except as expressly set forth in this Agreement, neither party nor such party's employees or agents are making, have made and each party expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the properties or this transaction including, without limitation, the existence of hazardous waste, or the suitability of the property for any intended use. Each party must independently verify all information and reports regarding any aspect or feature of the property. Each party is purchasing its respective property in "As Is" condition with all faults including both latent and patent defects and each party releases the other from any and all liability relating to any aspect or condition of the properties, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "**hazardous waste**" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCBs, petroleum and petroleum products and urea-formaldehyde.

16. SUCCESSORS.

This Agreement shall be binding on the heirs, successors, assigns and personal representatives of the parties hereto.

17. ATTORNEYS' FEES.

In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including,

without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

18. DEFAULT.

(a) Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default.

(b) In the event of a default, the nondefaulting party may:

(i) Terminate this Agreement upon written notice to the defaulting party, and recover from the defaulting party all damages incurred by the nondefaulting party;

(ii) Seek specific performance of this Agreement, and, in addition, recover all damages incurred by the nondefaulting party. The parties declare it to be their intent that this Agreement may be specifically enforced;

(iii) Perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting party or recover said monies from the defaulting party; and

(iv) Pursue all other remedies available at law, it being the intent of the parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting party.

19. NOTICES.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below:

Palouse: Dan Smith
Palouse River and Coulee City Railroad
315 W Third St
Pittsburg, KS 66762

Regents: Regents of the University of Idaho
Vice President, Finance and Administration
Box 443168
Moscow, ID 83844-3168

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term "**receipt**" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

20. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

21. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

22. CONSTRUCTION.

In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. Furthermore, "**person**" shall include individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

23. TIME PERIOD COMPUTATION.

All time periods in this Agreement shall be deemed to refer to calendar days unless the time period specifically references business days; provided that if the last date on which to perform any act or give any notice under this Agreement shall fall on a Saturday, Sunday or local, state or national holiday, such act or notice shall be deemed timely if performed or given on the next succeeding business day.

24. BINDING AGREEMENT.

This Agreement shall not be binding or enforceable until both parties have fully executed this Agreement and have delivered to each other an original counterpart of this Agreement fully executed by the delivering party.

25. 1031 EXCHANGE.

Regents acknowledges that Palouse may wish to structure this transaction as a tax deferred exchange of like-kind property within the meaning of Section 1031 of the Code. Regents agrees to reasonably cooperate with Palouse to effect such an exchange; provided, however, that (i) Regents not be required to acquire or take title to any exchange property, (ii) Regents shall not be required to incur any expense (excluding attorneys' fees) or liability whatsoever in connection with the exchange, including, without limitation, any obligation for the payment of any escrow, title, brokerage or other costs incurred with respect to the exchange, (iii) no substitution of Palouse shall release Palouse from any of its obligations, warranties or representations set forth in this Agreement or from liability for any prior or subsequent default under this Agreement by Palouse, its successors or assigns, which obligations shall continue as the obligations of a principal and not of a surety or guarantor, (iv) Palouse shall give Regents at least five (5) business days' prior notice of the proposed changes required to effect such exchange and the identity of any party to be substituted in the escrow, (v) Palouse shall be responsible for preparing all additional agreements, documents and escrow instructions (collectively, the "**Exchange Documents**") required by the exchange, at its sole cost and expense, and (vi) Palouse shall be responsible for making all determinations as to the legal sufficiency, tax considerations and other considerations relating to the proposed exchange, the Exchange Documents and the transactions contemplated thereby, and Regents shall in no event be responsible for, or in any way be deemed to warrant or represent any tax or other consequences of the exchange transaction arising by reason of Regents' performance of the acts required hereby.

26. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

EXECUTED as of the date first above written.

PALOUSE:

Palouse River and Coulee City Railroad, Inc.

By: 

Gary Lundy, Vice President

DAN SMITH

REGENTS:

Regents of the University of Idaho

By:  18 Jan 11

Lloyd E. Mues, Vice President Finance and Administration

List of Exhibits

Exhibit A – Diagram of Palouse and Regents Property

Exhibit B – Draft Easement Termination for Rail Line Easement

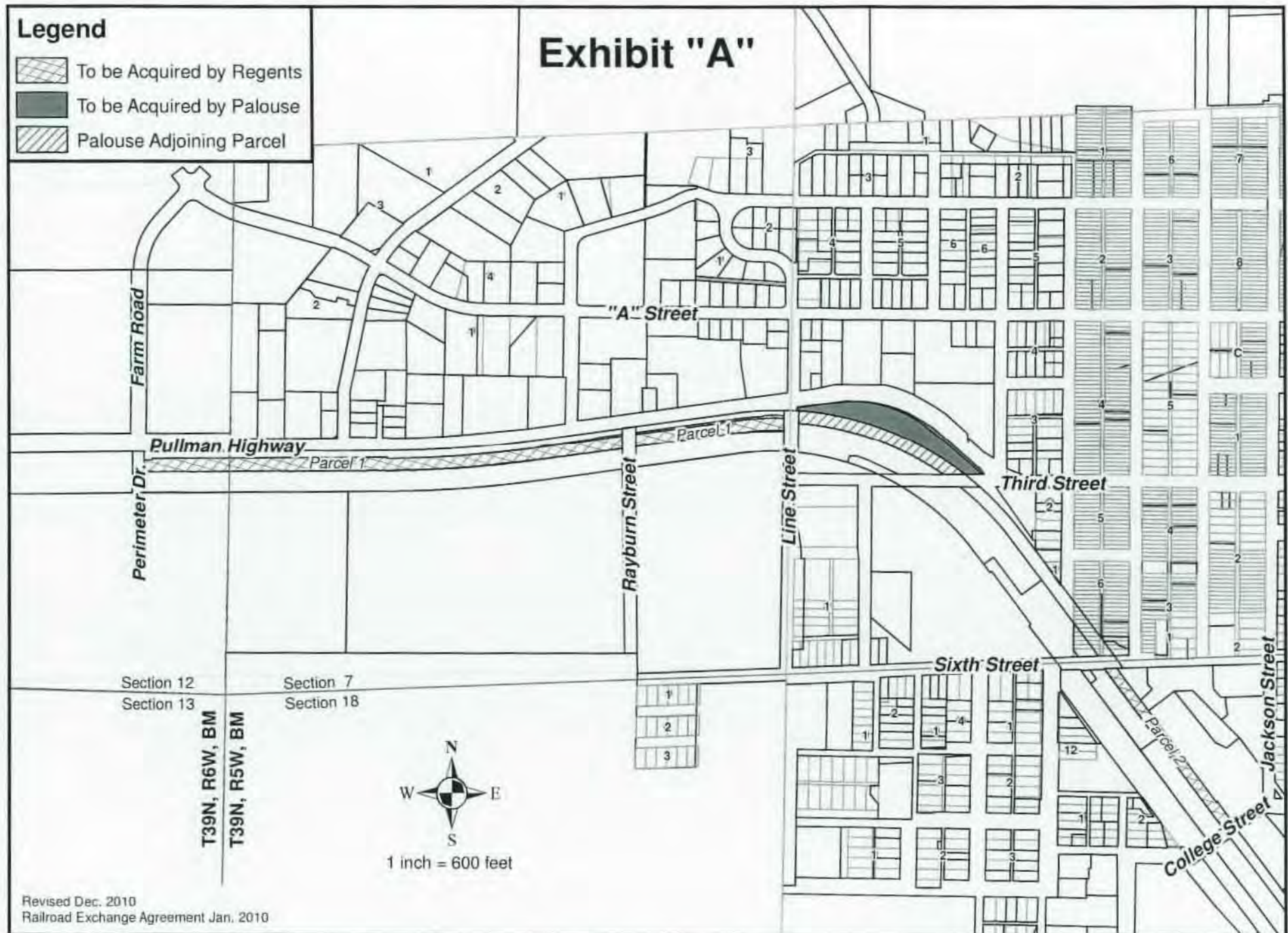


Exhibit B

EASEMENT TERMINATION AND QUIT CLAIM

THIS EASEMENT TERMINATION AND QUIT CLAIM made this ____ day of _____, 20__, between PALOUSE RIVER AND COULEE CITY RAILROAD, INC., a Washington corporation, herein referred to as "**Grantor**," and REGENTS OF THE UNIVERSITY OF IDAHO, a body politic and corporate and state educational institution organized and existing under the constitution and laws of the State of Idaho, herein referred to as "**Grantee**" witnesseth:

That Grantor, upon being granted an abandonment exemption by the Surface Transportation Board as ordered in STB Docket No. AB-570 (Sub-No. 3X), decided September 9, 2009, and for good and valuable consideration of one dollar, the receipt whereof is hereby acknowledged, and in accordance with the provisions of Section 12 (b) of that Rail Line Easement Agreement between the parties hereto and dated December 20, 2004 and recorded by the Latah County Recorder, Latah County, Idaho as Instrument Number 495410 on April 27, 2005 (as shown in the attached Exhibit A), does hereby terminate and REMISE, RELEASE, and QUIT CLAIM, unto Grantee and its successors and assigns forever, those rights, title, and interests in real property established by said Rail Line Easement as more particularly described in said Exhibit 'A'.

Together with all estate, right, title, interest, property, possession, claim and demand whatsoever, in law as well as in equity of the Grantor in or to the said property, and all and singular the tenements, hereditaments, and appurtenances thereunto belonging.

IN WITNESS WHEREOF, Grantor has hereunto set its hand on the day and year first above written.

GRANTOR:**Palouse River and Coulee City Railroad, Inc.**

By: Exhibit Only
~~Gary L. Lundy, Vice President~~

GRANTEE:**Regents of the University of Idaho**

By: Exhibit Only
~~Lloyd E. Mues, Vice President~~
~~Finance and Administration~~

STATE OF _____)
) ss.
 County of _____)

On this ____ day of _____, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Gary Lundy, known to me to be the Vice President of the Palouse River and Coulee City Railroad, Inc, the entity that executed the instrument, and acknowledged to me that he executed the same for and on behalf of the Palouse River and Coulee City Railroad.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

 Notary Public for _____
 Residing at _____
 My Commission Expires: _____

STATE OF IDAHO _____)
) ss.
 County of Latah _____)

On this ____ day of _____, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Lloyd E. Mues, known to me to be the Vice President for Finance & Administration of the University of Idaho, the University that executed the instrument, and acknowledged to me that he executed the same for and on behalf of the Board of Regents of the University of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

 Notary Public for Idaho
 Residing at _____
 My Commission Expires: _____

SITE LEASE

THIS SITE LEASE is entered into as of the ____ day of April, 2011, by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, a state educational institution and body politic and corporate organized and existing pursuant to the Constitution and laws of the State of Idaho ("Landlord") and Idaho Hospitality Inc., an Idaho corporation ("Tenant"). This agreement is hereinafter referred to as the "Lease".

RECITALS

A. Landlord is the owner of certain real property described in Exhibit A and the improvements made to that real property ("Premises"). Landlord and Tenant each desire to enter into a ground lease for the Premises to commence with occupation of Premises by Tenant on July 1, 2014 under terms and conditions of this Lease; and

B. Premises are currently improved with one building and a paved parking lot that are owned by Landlord and are included in the Premises under this Lease. Prior to commencement of this Lease on July 1, 2014, Landlord will provide Tenant with ample opportunity to inspect and test the condition of the Premises. Therefore, when Tenant takes possession of Premises Tenant will accept the Premises in its "AS-IS" condition with all faults, if any, including both latent and patent defects. Landlord is not making, will not make, has not made and expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the Premises including, without limitation, the existence of hazardous waste or the suitability of Premises for Tenant's intended use. Tenant's use and occupation of the Premises under this Lease will be at Tenant's sole risk and in reliance solely upon Tenant's inspection or non-inspection, as the case may be, as to the condition of Premises; and

C. Tenant shall have the absolute right at any time on or before June 1, 2014, with or without any reason, to notify Landlord in writing of Tenant's election to terminate this Lease and, upon such notice being given to Landlord, this Lease shall thereupon be terminated and each party shall thereafter be relieved of and released from any further obligations arising to the other party under this Lease, which Lease shall thereafter have no further force and effect; and

D. This Lease is contingent upon Tenant's acquisition and ownership on or before December 31, 2011 of the real property described on Exhibit C attached hereto and incorporated herein, and also contingent upon Tenant's continued ownership of said real property during the Term of this Lease. In the event Tenant either fails to acquire and own the real property described in Exhibit C on or before December 31, 2011 or fails to continue to own the real property described in Exhibit C after December 31, 2011, either event shall constitute a default under this Lease and this Lease shall be subject to termination under Section 21 of this Lease.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Recitals:** The parties acknowledge the foregoing Recitals are true and all terms and/or conditions set forth therein are incorporated into this Lease as if set forth in full herein.

2. **Premises:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to the terms and conditions expressed herein, certain real property located in the City of Moscow in Latah County, Idaho, specifically described in Exhibit A attached hereto and incorporated herein. As used herein the term "Premises" refers solely to the real property and improvements thereon, including the existing building, and parking improvements, including, but not limited to, asphalt paving, striping, lights, curbing, and landscaping.

3. **Term and Option for Renewal:** Except as Tenant may elect to terminate this Lease as provided in Recital C above, except as early termination is provided in Section 20 of this Lease and except as an option for renewal is provided in this Section of this Lease, this Lease shall commence July 1, 2014 shall expire on June 30, 2054 (the "Initial Term"). Tenant's occupation of Premises, and rights and duties associated with such occupation under this Lease shall commence on July 1, 2014. Prior to July 1, 2014, Tenant shall not have any rights and obligations in regard to the Premises and Landlord shall remain in possession of and responsible for the Premises and shall have all rights and obligations in regard to Premises. If at any time between January 1, 2052, and June 30, 2054, Tenant is using the Premises for hotel, restaurant, conference, convention and/or hospitality-related purpose(s) ("Primary Purpose(s)") and/or is using the Premises for any purpose directly supporting any Primary Purpose(s) occurring on the real property described in Exhibit C ("Auxiliary Purpose(s)"), then Tenant shall have an exclusive option, hereby granted by Landlord (the "Renewal Option"), to extend the Term of this Lease from July 1, 2054 through June 30, 2094 (the "Renewal Term") by notifying Landlord in writing at any time between July 1, 2052 and June 30, 2054 of Tenant's election to exercise the Renewal Option (the "Renewal Notice"), and upon Renewal Notice being given to Landlord, this Lease, upon Landlord's approval not to be unreasonably withheld or delayed, shall be automatically extended for the Renewal Term. In the event Tenant is using the Premises as of June 30, 2054 and thereafter for Primary Purpose(s) and/or Auxiliary Purpose(s) but failed to give the Renewal Notice as provided above, Tenant shall retain the right to exercise the Renewal Option, and upon written demand by Landlord at any time after June 30, 2054, Tenant must notify Landlord in writing, within thirty (30) days of such written demand by Landlord, of Tenant's exercise of the Renewal Option and upon such Renewal Notice being given to Landlord this Lease shall be extended for the Renewal Term, otherwise the Lease shall immediately terminate upon the expiration of said thirty (30) days and be of no further force and effect. All terms and provisions of this Lease shall remain in full force and effect during the Renewal Term, if any. The "Original Term" and "Renewal Term" are sometimes individually and sometimes collectively herein referred to as the "Term" of this Lease. The period from July 1, through June 30 of the next year during the Term is referred to as a "Lease Year" under this Lease.

4. **Rent:** The Premises are leased to Tenant for the rent amounts ("Rent") for those respective segments of the Term as shown in Exhibit B "Rent Schedule" attached hereto and incorporated herein. Rent is payable on or before July 1 of each Lease Year of the Term commencing July 1, 2014. Rent shall be made payable to Bursar, University of Idaho, and mailed to the attention of "General Accounting, University of Idaho, Moscow ID 83844-3166." Rent for the Renewal Term is also shown on Exhibit B.

5. **Maintenance, Repair and Replacement:** Through June 30, 2014, Landlord shall maintain and repair Premises in the usual and customary manner in which it generally maintains and repairs and manages other buildings and paved parking facilities and shall provide the Premises to Tenant in the same condition as existed on the date this Lease is entered into, normal wear and tear excepted. On and after July 1, 2014, Tenant shall maintain, repair, replace, demolish, develop and/or construct the Premises and improvements thereon over the Term under the terms and provisions of this Lease.

6. **Surrender of Premises at Termination:** Tenant, may remove any and all building and parking improvements on the Premises prior to termination, but in that event Tenant shall surrender Premises to Landlord upon termination of this Lease either (i) in a condition suitable for the immediate use of no less than forty (40) paved parking spaces and accompanying striping, lighting, curbing and landscaping typical of other University of Idaho parking lots in this portion of campus ("improved parking spaces") or (ii) improved with between 0 and 39 improved parking spaces and/or other permitted improvements having an assessed value equal to or greater than the fair market cost to construct the difference between 40 improved parking spaces minus the number of improved parking spaces, if any, on the Premises in a condition suitable for immediate use upon termination of this Lease. All repair or replacement of improved parking spaces shall be completed at Tenant's sole cost and expense. Tenant shall not be entitled to compensation for any value attributed to the improvements surrendered under the terms of this Lease. In the event Tenant is not in compliance with either surrender option set forth above in this Section, Tenant shall pay to Landlord, upon thirty (30) days of invoice, an amount equal to the fair market value to construct the difference between 40 improved parking spaces and the number of improved parking spaces, if any, on the Premises in a condition suitable for immediate use upon termination of this Lease minus the assessed value of all other permitted improvements on the Premises upon termination of this Lease.

7. **Taxes:** Tenant shall pay all applicable taxes, license fees, permits, special assessments or other charges (if any) which may become due or which may be lawfully assessed against Premises, against Tenant, against the business conducted on Premises and against any and all improvements thereon during or for the period of the Term of this Lease even if such charges accrued during the time of Tenant's occupation are not due and payable until after termination of this Lease.

8. **Right to Assign:** Tenant shall not assign this Lease or sublet the Premises, or any part or portion thereof, without the prior written consent of the Landlord. Landlord shall not unduly withhold consent of assignment of this Lease or of any subletting when such assignment and/or subtenancy is exclusively for permitted uses set forth in Section 9 of this Lease. Notwithstanding any assignment and/or subletting, Tenant shall continue to be bound and obligated by the terms, conditions, covenants and provisions of this Lease until the assignee and/or subtenant shall execute and deliver to Landlord an instrument by the terms and provisions of which such assignee and/or subtenant shall assume and agree to be bound by and to perform all of the terms, conditions, covenants and obligations of Tenant under this Lease. Upon the execution and delivery of such instrument, Tenant shall be relieved and discharged of and from all obligations under this Lease accruing from and after the date of execution of the instrument

by any such assignee and/or subtenant. Unless otherwise assumed by the assignee and/or subtenant and such assumption is enforceable by Landlord, no assignment of this Lease shall release, waive or discharge Tenant from any liability or obligation arising from or accruing prior to the date any assignee and/or subtenant assumes and agrees to be bound by and to perform all of the terms, conditions, covenants and obligations of Tenant under this Lease. Landlord's consent to one assignment and/or subletting shall not waive Tenant's obligation to obtain Landlord's consent or Landlord's right to object to any future assignment and/or subletting.

In the event of sale, transfer or assignment by Landlord of Landlord's interest in the property on which the Premises are located, Landlord shall cause such successor in interest to expressly assume in writing all of Landlord's duties and obligations pursuant to this Lease. Upon receipt of such assumption by the successor in interest, Landlord shall be released from any and all obligations or duties arising under this Lease.

9. **Permitted Uses and Improvements; Removal of Existing Building and Improvements:** Tenant shall use and occupy Premises for any Primary Purpose(s) and/or Auxiliary Purpose(s). Tenant may demolish and remove Landlord's existing building and improvements from the Premises and/or construct new buildings and/or improvements on the Premises at Tenant's sole expense if desired by Tenant to accommodate the uses permitted under this Section, provided, however, Tenant shall first provide written notice to Landlord of the date Tenant will commence any such demolition, removal and/or construction, and, upon approval by Landlord, which approval shall not be unreasonably withheld or delayed so long as Tenant's proposed use of any such building and/or improvement is consistent with a permitted use set forth in this Section 9. Tenant shall then provide a copy of a "Certificate of Completion" to Landlord for demolition work from the City of Moscow within 120 days of the noticed and approved commencement date for demolition of any building and/or improvement and provide a Certificate of Occupancy to Landlord for construction work from the City of Moscow within 540 days of the noticed and approved commencement date for construction of any building and/or improvement. Failure to obtain Landlord approval and/or to provide such notice and certificate as provided herein shall be deemed a default under this Lease and the complete or partial loss of value to Landlord resulting from any demolition of Landlord's existing building as well as any expenses assumed by Landlord to remedy any incomplete construction activity shall be considered as additional damages to any other damages which may result from Tenant's default under terms of this Lease.

10. **Utilities:** Tenant agrees to pay any utilities for the use of Premises commencing on July 1, 2014 and continuing for the Term of the Lease.

11. **Indemnification and Insurance:** During the Term of this Lease, Tenant is required to carry the types and limits of insurance as set forth in this Section. At its option, Landlord may request certified copies of required policies and endorsements, which shall be provided by Tenant within ten (10) business days of Landlord's request. All insurers shall have a Best's rating of AV or better and be licensed and admitted in Idaho. Tenant shall furnish Landlord with a certificate of insurance executed by a duly authorized representative of each

insurer, showing compliance with the insurance requirements set forth below. All policies required shall be written as primary policies and not contributing to nor in excess of any coverage Landlord may choose to maintain. All certificates shall provide for thirty (30) days' written notice to Landlord prior to cancellation or material change of any insurance referred to therein. All policies shall name State of Idaho and the Regents of the University of Idaho as an additional insured. Certificates shall be mailed to: P.O. Box 443162, Moscow, ID 83844-3162, Attn: Risk Management. All policies shall contain waiver of subrogation coverage or endorsements.

Failure of Landlord to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant's obligation to maintain such insurance. Failure to maintain the required insurance and Tenant's failure to cure any such requirement within the time provided and under the terms set forth in Section 21 of this Lease may result in termination of this Lease at Landlord's option. By requiring insurance herein, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Landlord in this Lease. Tenant shall require any subtenants to comply with the insurance provisions of this Lease. In the event Tenant is not occupying space and is enforcing the subtenant's compliance with these insurance provisions, Tenant shall not be responsible, as a requirement of this Lease, to maintain the specific insurance required below.

Tenant shall obtain or require subtenants, as applicable to obtain insurance of the types and in the amounts described below.

A) Commercial General and Umbrella Liability Insurance. Tenant (or subtenant) shall maintain Commercial General Liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than **\$1,000,000** each occurrence and in the aggregate. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Premises and shall not be less than **\$1,000,000**. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract.

B) Commercial Auto Insurance. Tenant (or subtenant) shall maintain a Commercial Auto policy with a Combined Single Limit of \$1,000,000; Underinsured and Uninsured Motorists limit of \$1,000,000; Comprehensive; Collision; and a Medical Payments limit of \$10,000. Coverage shall include Non-Owned and Hired Car coverage.

C) Personal property. Tenant (or subtenant) shall purchase insurance to cover Tenant's (or subtenant's) personal property. In no event shall Landlord be liable for any damage to or loss of personal property sustained by Tenant (or subtenant), whether or not insured, even if such loss is caused by the negligence of Landlord, its employees, officers or agents.

D) Workers' Compensation. Where required by law, Tenant (or subtenant) shall maintain all statutorily required coverages including Employer's Liability.

12. **Property Encumbrances:** This Lease is subject to all applicable restrictions, reservations, limitations, and other rights of record, and is subject to any and all easements for public utilities of record. By entering into this Lease, Tenant acknowledges that it has inspected and is satisfied with the quality of title for the Premises being leased and accepts all encumbrances recorded or known to exist for the Premises.

13. **Hazardous Materials:** Tenant shall not, nor shall it allow others to, accumulate, use, or store on the Premises materials classified as hazardous, biomedical or toxic waste except in compliance with environmental laws and other applicable state, federal, or local laws, rules or regulations. Tenant shall comply and require subtenants to comply with any lawful order by an entity with authority to regulate the use, accumulation, storage or disposal of hazardous waste. As used herein, the term "environmental laws" shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA), the Resource Conservation Recovery Act, as amended (RCRA), the Federal Water Pollution Control Act, the Clean Air Act and any similar local, state or federal law, rule, ordinance or regulation. As used herein, the term "hazardous materials" shall mean any hazardous substance, pollutants, contaminants, or other hazardous waste or toxic substances defined in any environmental laws including, without limitation, petroleum and petroleum products, asbestos and asbestos containing materials, PCBs and urea-formaldehyde.

Tenant hereby agrees to indemnify, defend, and hold Landlord harmless from and against any and all claims, damages, liabilities, costs, expenses (including reasonable attorneys' fees), causes of action and judgments arising out of or related to hazardous materials existing in, or under the Premises subsequent to Tenant's occupation of the Premises. Tenant shall not be liable for any pre-existing conditions on the Premises or conditions occurring during Landlord's use of the Premises, except Tenant shall be responsible for lawful and safe removal of any hazardous materials associated with the removal of Landlord's existing building in the event Tenant requests, and Landlord approves, such removal as provided in Section 9 of this Lease.

14. **Waste and Nuisance Prohibited:** Tenant shall comply, during the term of this Lease, with all applicable laws affecting the Premises, the violation of which might result in any penalty assessed upon the Landlord or forfeiture of the Landlord's title to Premises. Tenant shall not commit, or suffer to be committed, any waste on the Premises or improvements, or any nuisance.

15. **Remedies and Forbearance/Waivers:** No delay or omission on the part of the Landlord or Tenant to exercise any right or power granted herein shall impair any such right or power nor shall be construed as a waiver thereof, and every such right or power may nevertheless be exercised.

16. **Officials, Agents, and Employees Not Personally Liable:** It is agreed that in no event shall any official, officer, employee or agent of the Landlord, nor any official, officer, employee or agent of the Landlord be in any way personally liable or responsible for any

covenant or agreement herein contained, whether expressed or implied, nor for any statement, representation or warranty made herein or in any way connected with this Lease.

17. **Quiet Enjoyment:** Landlord covenants that the Tenant shall have the peaceful and quiet enjoyment of the Premises for the term of the Lease.

18. **Right of Entry:** Tenant shall permit the Landlord and the agents and employees of the Landlord to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same for compliance with the terms of this Lease; provided, however, that Landlord shall first give seventy-two (72) hours written notice of its desire to inspect Premises, when such inspection requires entry into a building leased or owned by Tenant. Such notice for right of entry and inspection procedures for building interiors shall not apply during an emergency in which such notice is impractical and Landlord's access to Premises is necessary for preservation of life and/or property.

19. **Right of First Refusal:** Subject to any rules or regulations governing the disposal of Landlord's real property, and in the event that at any time during the Term of this Lease Landlord shall receive from any third party a bona fide offer to purchase all or any portion of the Premises at a price and terms acceptable to Landlord, Landlord shall give written notice of such purchaser's price and terms to Tenant ("**Notice**") and Tenant shall have thereafter an exclusive right and option to purchase Premises at the same price and terms as given in the Notice. Tenant may only exercise such option if at all, by timely giving Landlord written notice of its exercise within a sixty (60) day period from the date of Landlord's Notice to Tenant as provided above. If Tenant shall fail to exercise such option within such sixty (60) day period, Landlord shall thereafter be free to sell the Premises to such third party on the same terms and conditions as set forth in the Notice. If Premises is not sold by Landlord within one (1) year thereafter to the same third party (or affiliate of such third party) and on the same price and terms as given in the Notice, then the right of first refusal herein shall be restored.

20. **Tenant's Right to Early Termination:** Tenant shall have the right to terminate this Lease on any June 30 during the Term of Lease if written notice to Landlord to that effect is provided by Tenant no later than the immediately preceding June 1. Said right to terminate Lease early shall continue in effect throughout the term of this Lease until such time as Tenant demolishes or otherwise materially alters or no longer maintains Landlord's existing building and parking improvements. Once this right has been forfeited due to such demolition or failure to maintain forty (40) paved parking spaces, the right to early termination may only be restored and utilized by Tenant by compensating the Landlord for the replacement value of the demolished building and either the surrender of Premises to Landlord on the date of early termination in a condition suitable for the immediate use of no less than forty (40) paved parking spaces and accompanying striping, lighting, curbing and landscaping typical of other University of Idaho parking lots in this portion of campus or the surrender of Premises with between 0 and 39 improved parking spaces and by compensating Landlord for an amount equal to the fair market value to construct the difference between 40 improved parking spaces and the number of improved parking spaces, if any, on the Premises on the date of early termination, provided, however, that Tenant shall be credited for the assessed value of all improvements on the Premises on the date of early termination in determining the amount,

if any, Tenant will be required to compensate Landlord under the terms and provisions of this Section.

21. **Default:** In the event Landlord shall at any time deem Tenant or any assignee and/or subtenant in breach of this Lease, Landlord shall promptly notify Tenant and any such assignee and/or subtenant, in writing, stating specifically the nature of any such alleged breach. Tenant and any such assignee and/or subtenant shall not be deemed to be in default hereunder unless Tenant and/or any such assignee and/or subtenant fails to cure any such default within ninety (90) calendar days after receipt of such written notice. In the event of default and failure to cure within such ninety (90) calendar days or, in the event the cure requires more than ninety (90) days and is being diligently pursued, then upon such longer failure to cure, Landlord shall have the right to terminate Lease in addition to all rights and remedies provided by law.

22. **Attorney Fees and Costs:** In the event that either party to this Lease shall enforce any of the provisions hereof in any action at law or in equity the prevailing party to such litigation shall be entitled to recover from the other party or parties all costs and expenses, including reasonable attorney fees, incurred therein.

23. **Integration:** This Lease embodies the entire agreement regarding the disposition of the rights associated with the Premises and represents the understanding of the parties relating to the subject matter herein and supersedes all prior understandings relating thereto. This Lease shall not be modified except in writing signed by all parties to be bound.

24. **Execution of Documents:** The parties agree that they shall sign or cause to be signed all documents necessary to the effectuation of this Lease or any of the provisions herein.

25. **Authority to Enter Lease:** Landlord has the authority to enter into this Lease and that the execution, delivery of this Lease and the performance of the contractual obligations set forth herein are not in violation of any federal, state, or local statute, ordinance, rule or regulation and that no consents not already obtained are required. Individuals signing on behalf of Landlord and Tenant have the delegated authority to obligate their respective entity as provided by this Lease.

24. **Notices:** All notices under this Lease shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the date of mailing if mailed to the party to whom notice is to be given by registered or certified United States mail, postage prepaid, and properly addressed as follows:

If to the Landlord: Regents of the University of Idaho
Attn: Vice President, Finance and Administration
University of Idaho
Moscow ID 83844-3168

If to the Tenant: Idaho Hospitality Inc.
Attn: Ram Sisodiya, President
101 Baker Street
Moscow, ID 83843

With copy to: Landeck & Forseth
Attorneys at Law
P.O. Box 9344
Moscow, ID 83843

The addresses provided above may be changed and additional addresses or notices may be specified from time to time by notice given in writing in accordance with this Section.

25. **Binding Effect:** This Lease shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

26. **Severability:** If any term or provision of this Lease or the application of it to any person or entity or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons, entities or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

27. **Headings:** Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provisions of this Lease.

28. **Counterparts:** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

29. **Time of the Essence:** Time is of the essence in this Lease, and of each and every covenant, term, condition, and provisions thereof.

30. **Nondiscrimination and Affirmative Action:** Landlord and Tenant shall not discriminate against any employee or applicant for employment in the performance of this Lease, with respect to tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, age, status as disabled or a veteran, or physical or mental handicaps, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Site Lease. Landlord and Tenant certify that they do not, and will not maintain segregated facilities or accommodations on the basis of race, color, religion or national origin. Regarding any position for which an employee or an applicant is qualified, the Landlord and Tenant agree to take affirmative action to employ, train, advance in employment, and retain individuals in accordance with applicable laws and regulations including:

A) For nondiscrimination based on race, color, religion, sex or national origin, this includes, but is not limited to, the U.S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319). Grantee disputes related to compliance with its obligations shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (See 41 CFR 60-1.1).

B) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4012)(the Act); Executive Order 11701, January 24, 1973 (38 CFR 2675, January 29, 1973); and the regulations of the Secretary of Labor (41 CFR Part 60-250).

C) For nondiscrimination based on the Handicapped this includes, but is not limited to, Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793)(the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 FR Part 60- 741).

D) For nondiscrimination based on Age this includes, but is not limited to, executive Order 11141, February 12, 1964 (29 CFR 2477).

E) Landlord and Tenant shall include the terms of this clause in every subcontract or purchase order exceeding \$50,000 and shall act as specified by the Department of Labor to enforce the terms and implement remedies.

31. **Venue, Governing Law:** Any legal proceeding instituted between the parties shall be in the courts of the County of Latah, State of Idaho, and each of the parties agrees to submit to the jurisdiction of such courts. It is further agreed that this Agreement shall be governed by the laws of the State of Idaho.

32. **No Partnership:** The provisions of this Lease are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed effective as of the day and year first above written.

LANDLORD:

TENANT:

BOARD OF REGENTS OF THE
UNIVERSITY OF IDAHO

IDAHO HOSPITALITY INC.

By _____
Lloyd E Mues, Vice President
Finance and Administration

By _____
Ram Sisodiya, President

Date _____

Date _____

Exhibit A Premises

All that portion of the Southwest Quarter of the Southeast Quarter of Section 7, Township 39 North, Range 5 West, Boise Meridian lying south of the former Burlington Northern Railroad right of way (said former railroad right of way now owned by the DeMeerleer Family Limited Partnership) and bounded on the south by the north right of way of Third Street and bounded on the west by the east right of way of Line Street, said parcel containing approximately 0.58 acres.

Exhibit B Rent Schedule

July 2014 through June 2019 \$18,800/yr
July 2019 through June 2024 \$21,150/yr
July 2024 through June 2029 \$23,794/yr
July 2029 through June 2034 \$26,768/yr
July 2034 through June 2039 \$30,114/yr
July 2039 through June 2044 \$33,878/yr
July 2044 through June 2049 \$38,113/yr
July 2049 through June 2054 \$42,877/yr

Rent Schedule for Renewal Term:

July 2054 through June 2059 \$48,237/yr
July 2059 through June 2064 \$54,367/yr
July 2064 through June 2069 \$61,050/yr
July 2069 through June 2074 \$68,681/yr
July 2074 through June 2079 \$77,266/yr
July 2079 through June 2084 \$86,924/yr
July 2084 through June 2089 \$97,790/yr
July 2089 through June 2094 \$110,014/yr

EXHIBIT C REQUIRED PROXIMATE OWNERSHIP*Parcel I:*

A parcel of land located in the Southeast quarter (SE1/4) of Section 7, Township 39 North, Range 5 West, B.M., and being more particularly described as follows:

BEGINNING at the south quarter corner of said Section 7, thence North 00°04'53" West 1287.48 feet along the meridional centerline of said Section 7 to a point of intersection with the south right of way of State Highway 8; thence North 81°00'00" East 36.21 feet to the intersection of said south right of way of State Highway 8 and the easterly right of way of Line Street and the TRUE POINT OF BEGINNING; thence North 81°00'00" East 78.96 feet along said south highway right of way to P.S. Station 460 + 00; thence along a 200.00 foot spiral to the right, said spiral having a chord bearing of North 83°57'03" East and chord distance of 193.51 feet to P.S.C. Station 462 + 00; thence along a curve to the right 333.56 feet, said curve having a delta of 32°02'00", radius of 596.62 feet, chord of 329.24 feet, chord bearing South 73°59'00" East to P.C.S. Station 465 + 55.90; thence along a 200.00 foot spiral to the right, said spiral having a chord bearing South 51°54'27" East and chord distance of 193.42 feet to P.T. Station 467 + 55.90; thence South 48°58'00" East 11.00 feet to P.S. Station 467 + 66.90; thence feet along a spiral to the left, to P.O.S. Station 468 + 21.2, this segment of spiral having a chord of 54.67 feet and chord bearing South 49°14'12" East; thence South 49°44'04" East 145.12 feet to a point of intersection with the north right of way of Third Street; thence along the north right of way of said Third Street, South 89°14'54" West 82.47 feet to a point of intersection with the northerly right of way of the existing Union Pacific Railroad Company; thence 881.79 feet along above said northerly right of way on a curve to the left, said curve having a delta of 34°04'37", radius of 1482.62 feet, chord of 868.86 feet, chord bearing North 70°04'06" West to a point of intersection with the east right of way of Line Street; thence along said right of way North 00°45'45" West, 19.03 feet to a point of intersection with the southerly right of way of State Highway 8 and the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM that portion deeded to the State of Idaho, as more fully set out in that certain Warranty Deed recorded under Recorder's Fee No. 412301.

Parcel II:

A parcel of land being the remaining 62.50 foot wide railroad right of way commonly known as the Moscow Branch of the Union Pacific Railroad Company (UPRR) right of way, lying between Line Street and Third Street within the southwest quarter of the southeast quarter SW1/4SE1/4 of Section 7, Township 39 North, Range 5 West, B.M., and described as follows:

COMMENCING at the south one quarter corner of Section 7, Township 39 North, Range 5 West, Boise Meridian, Latah County, Idaho from which the center one quarter corner of said section bears North 01°01'23" East; thence along the west line of the southeast quarter of said section, North 01°01'23" East 966.69 feet to the westerly projection of the north right of way line of Third Street; thence along said westerly projection, and the north line of Third Street, South 89°39'12" East 851.65 feet to the intersection with the easterly line of the UPRR right of way and the POINT OF BEGINNING; thence along the north line of Third Street, North 89°39'12" West, 106.11 feet to the intersection with the northeasterly line of that parcel of land conveyed in Recorder's Instrument No. 493734, and shown on a Record of Survey Recorder's Instrument No. 497959; thence along said parcel, 12.50 feet southwesterly and parallel with the UPRR centerline, 752.79 feet on a non-tangent curve to the left, with a radius of 1419.89 feet and a chord which bears North 70°27'48" West, 744.00 feet to the intersection with the east right of way line of Line Street; thence along the east line of Line Street, North 01°01'23" East 62.60 feet to the intersection with the northerly line of the UPRR right of way; thence along said right of way, 877.18 feet on a non-tangent curve to the right with a radius of 1482.39 feet and a chord which bears South 68°50'24" East, 864.43 feet to the POINT OF BEGINNING.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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LEWIS-CLARK STATE COLLEGE

SUBJECT

Lewis-Clark State College (LCSC) requests Board approval of an easement to preserve access by a private property owner to the owners' parking area adjoining streets vacated by the City of Lewiston.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.I.5.b(2) "Real and Personal Property and Services.

BACKGROUND/DISCUSSION

Through a series of Division of Public Works (DPW) projects, LCSC has converted the property along the Lewiston campus' western border (4th St., running north and south, between 11th Ave on the south and 7th Ave on the north—see overhead schematic at Attach 2) into expanded parking for campus. In the course of these projects, 4th St. was vacated by the City of Lewiston and transferred to the College and converted into a system of parking areas extending along the west side of campus. Recently the City discovered that the vacation paperwork for three small sections of adjoining side streets had not been completed when the original planning documents were submitted in 2006. The City has cooperated fully with LCSC in finalizing the remaining documents.

One of the remaining to-be-vacated areas—a short section of 8th St. which feeds into LCSC's 4th St. property—abuts the parking lot of the privately-owned College Place residential facility. The private owners are ready to allow the City to vacate this last parcel of street and cede the property to LCSC, but they have requested that the College ensure access to the only two approaches to their parking lot from the cul-de-sacs on 8th Ave. and 9th Ave. The College and City planners agree that this is a reasonable request. Granting the requested easement to the owners serves LCSC's interests in preserving a seamless parking system on the west side of campus which integrates the College Place facility parking area as part of the area serving LCSC students, staff, and visitors.

As illustrated in the diagram accompanying the proposed easement (Attach 1), LCSC will retain full use of its existing parking spaces on the 8th Ave. and 9th Ave. approaches to its 4th St. parking areas. The easement areas recommended by the City staff have been designed to allow the private owners' continued access to the driveways on the northern and southern ends of their parking lot.

IMPACT

Granting this private access easement will permit LCSC's continued use and access to its own parking lots and properties, following the transfer of the City street property to the College, while providing peace of mind to the owners that LCSC would not at some future point block the current two access points to their

BUSINESS AFFAIRS AND HUMAN RESOURCES
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parking lot. There are no foreseen negative financial or operational impacts associated with the granting of this easement.

ATTACHMENTS

Attachment 1 – Easement document	Page 3
Attachment 2 – Schematic diagram of west side parking complex	Page 9

STAFF COMMENTS AND RECOMMENDATIONS

Staff has not identified any issues of concern and recommends approval.

BOARD ACTION

I move to approve the granting of a non-exclusive access easement to the owners of the College Place facility parking lot, and to authorize the Vice President for Finance and Administration at Lewis-Clark State College to sign all necessary documents with the private property owners and City of Lewiston on behalf of the Board of Trustees.

Motion by _____ Seconded by _____ Carried Yes ____ No ____

EASEMENT

THIS EASEMENT, dated this ____ day of _____ 2011 is by and between STATE OF IDAHO, BY AND THROUGH THE STATE BOARD OF EDUCATION AS BOARD OF TRUSTEES FOR LEWIS-CLARK STATE COLLEGE, as “GRANTOR”, and COLLEGE PLACE, LLC, an Idaho limited liability company, as “GRANTEE”

WITNESSETH:

WHEREAS, Grantee is the owner of the following-described real property situate in Lewiston, Nez Perce County, Idaho, and more particularly described as follow, to wit:

Lots 1 through 6, inclusive, Block 5, Holcomb First Subdivision to the City of Lewiston, according to the recorded plat thereof, on file in the Office of the Recorder of Nez Perce County, Idaho, Book 1 of plats, page 909, Records of Nez Perce County, Idaho,

and

WHEREAS, Grantor has requested that the City of Lewiston vacate to Grantor portions of Eighth Avenue and Ninth Avenue between Third Street and Fourth Street in the City of Lewiston, and

WHEREAS, such vacation requires consent of Grantee, which Grantee agrees to give, and

WHEREAS, the Grantor executes this Easement to provide Grantee, its successors, assigns and their respective tenants and invitees, access to its parking lot over a portions of the vacated street rights-of-way as generally shown on the diagram attached hereto as Exhibit A,

NOW, THEREFORE, in consideration of the premises and the sum of Ten Dollars (\$10) and other good and valuable consideration in hand paid by Grantee to Grantor, Grantor does, by these presents, bargain, sell and convey unto Grantee, its successors, assigns, the following easements, to wit:

A non-exclusive access easement across a portion of the 8th Avenue (Harrison St.) right-of-way as originally dedicated by Holcomb's First Subdivision of Lot 10 of Acres, said property located in the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section 1, Township 35 North, Range 6 West, B.M., City of Lewiston, County of Nez Perce, Idaho, and being more particularly described as follows:

COMMENCING at the stone monument which marks the location of the intersection of 8th Avenue (Harrison St.) and Third Street; thence N 89°59'21" E along the centerline of 8th Avenue (Harrison St.) a distance of 197.95 feet to the intersection of the 8th Avenue (Harrison St.) centerline and the extended east right-of-way line of the alley which bisects Block 5 of Holcomb's First Subdivision of Lot 10 of Acres; thence continuing N 89°59'21" E along said centerline a distance of 74.27 feet to a point on the easterly right-of-way line of the proposed cul-de-sac on 8th Avenue (Harrison St.) and the **POINT OF BEGINNING**; thence northerly along said proposed cul-de-sac right-of-way line on a non-tangent curve to the left having a radius of 50.00 feet, a central angle of 04°36'13", a long chord of 4.02 feet bearing N 05°09'25" E, for an arc length of 4.02 feet; thence N 89°59'21" E a distance of 36.40 feet; thence S 00°00'07" W a distance of 44.00 feet to a point on the south right-of-way line of 8th Avenue; thence S 89°59'21" W along said right-of-way line a distance of 67.95 feet to a point on the proposed cul-de-sac on 8th Avenue; thence northerly along said proposed cul-de-sac right-of-way line on a non-tangent curve to the left having a radius of 50.00 feet, a central angle of 60°57'55", a long chord of 50.73 feet bearing N 37°56'29" E, for an arc length of 53.20 feet to the **POINT OF BEGINNING**.

AND

A non-exclusive access easement across a portion of the 9th Avenue (Hancock St.) right-of-way as originally dedicated by Holcomb's First Subdivision of Lot 10 of Acres, said property located in the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section 1, Township 35 North, Range 6 West, B.M., City of Lewiston, County of Nez Perce, Idaho, and being more particularly described as follows:

COMMENCING at the stone monument which marks the location of the intersection of 9th Avenue (Hancock St.) and Third Street; thence N 89°59'19" E along the centerline of 9th Avenue (Hancock St.) a distance of 197.98 feet to the intersection of the 9th Avenue (Hancock St.) centerline and the extended east right-of-way line of the alley which bisects Block 5 of Holcomb's First Subdivision of Lot 10 of Acres; thence continuing N 89°59'19" E along said centerline a distance of 68.10 feet to a point on the easterly right-of-way line of the proposed cul-de-sac on 9th Avenue (Harrison St.) and the **POINT OF BEGINNING**; thence northerly along said proposed cul-de-sac right-of-way line on a non-tangent curve to the left having a radius of 50.00 feet, a central angle of 55°52'28", a long chord of 46.85 feet bearing N 31°23'09" W, for an arc length of 48.76 feet to a point on the north right-of-way line of 9th Avenue; thence N 89°59'19" E along said right-of-way line a distance of 68.30 feet; thence S 00°00'05" W a distance of 42.00 feet; thence S 89°59'19" W a distance of 43.82 feet to a point on the proposed cul-de-sac on 9th Avenue; thence northerly along said proposed cul-de-sac right-of-way line on a non-tangent curve to the left having a radius of 50.00 feet, a central angle of 02°17'38", a long chord of 2.00 feet bearing N 02°18'06" W, for an arc length of 2.00 feet to the **POINT OF BEGINNING**.

The easements herein granted shall constitute a burden upon the portions of the vacated street right-of-ways over which the above-described easements pass and shall run with, benefit and be appurtenant to Grantee's property which is described above.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed by their duly authorized representative the day and year first above written.

STATE OF IDAHO, BY AND THROUGH
THE STATE BOARD OF EDUCATION AS
BOARD OF TRUSTEES FOR LEWIS-
CLARK STATE COLLEGE

BY _____
CHET HERBST, Vice-President for
Finance and Administration

GRANTOR

STATE OF IDAHO)
 : ss.
County of NEZ PERCE)

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared, CHET HERBST, known to me to be the Vice President for Finance & Administration of Lewis-Clark State College, whose name is subscribed to foregoing agreement and acknowledged to me that he executed the same for and on behalf of the Idaho State Board of Education and Lewis-Clark State College.

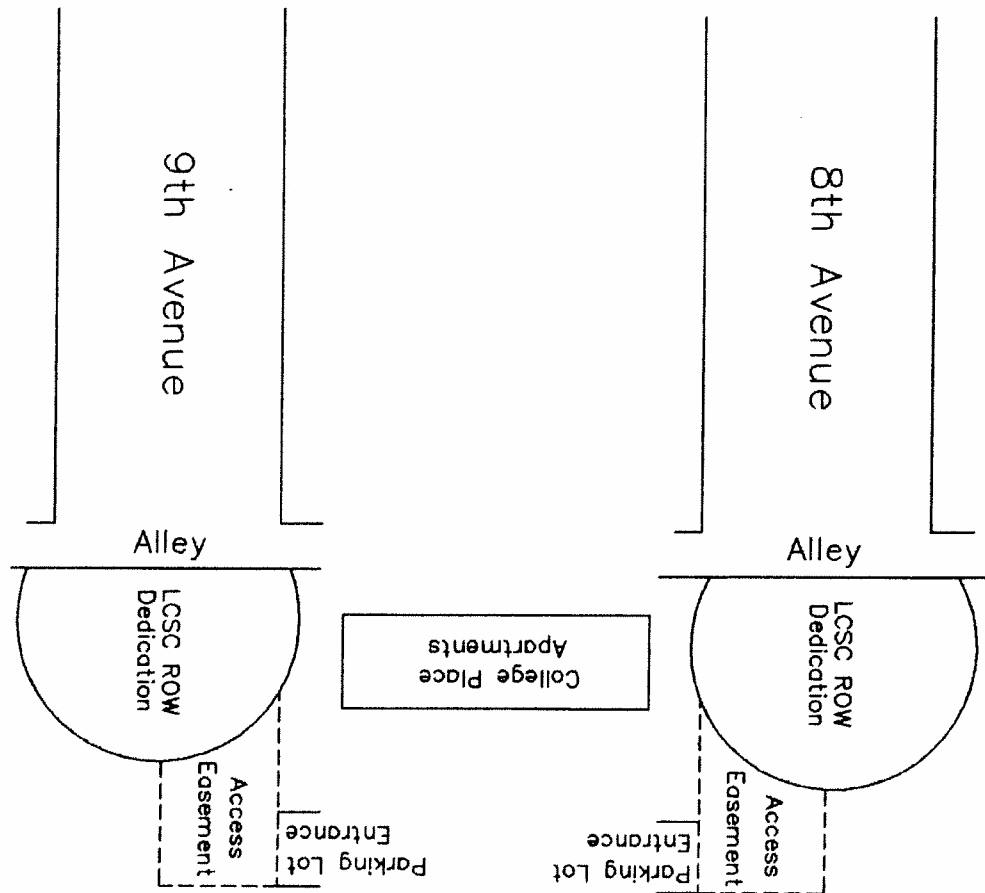
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal
the day and year first above written.

Notary Public in and for the State of Idaho
Residing at _____
My Commission expires: _____



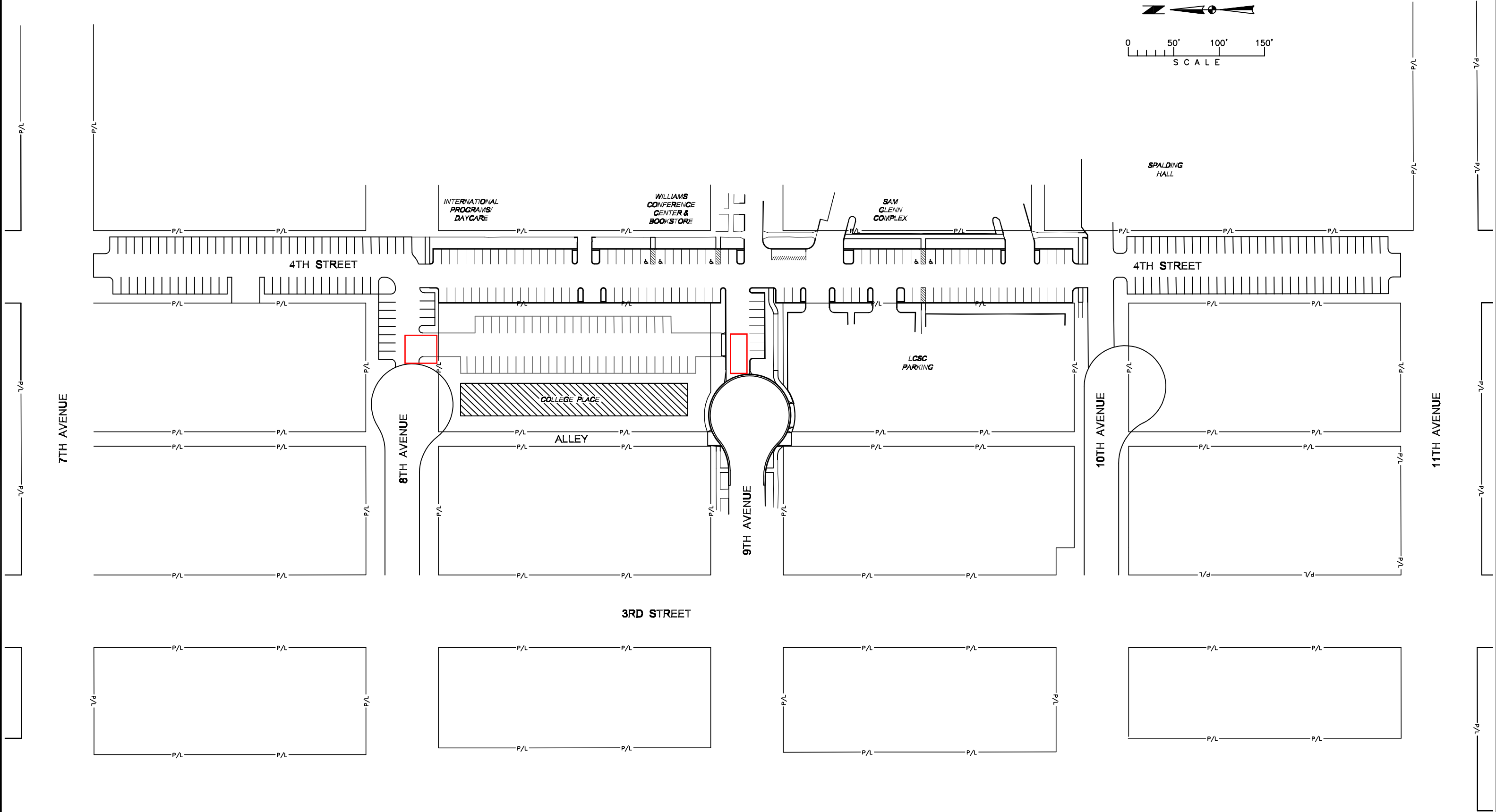
3RD STREET

ACCESS EASEMENTS - LCSC TO COLLEGE PLACE



VACATED 4TH STREET

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LEWIS-CLARK STATE COLLEGE

SUBJECT

Board approval to accept a loan from the City of Lewiston to finance, in part, an elevator replacement project for Center for Arts and History

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.F.1. "Bonds and Other Indebtedness"

BACKGROUND/DISCUSSION

Lewis-Clark State College (LCSC) has identified \$150,000 in funding sources to carry out an important life/safety project in its Center for Arts and History (CAH):

- \$50,000 from Institutional funds
- \$50,000 as a gift for a new elevator from the LCSC Foundation
- \$50,000 from a Community Development Block Grant (CDBG) from the City of Lewiston, provided in the form of a forgivable 10-year loan

Acceptance of the City's grant/loan is contingent upon State Board approval of LCSC taking on \$50,000 of indebtedness.

The CAH is located in a historic building (originally used as a bank, until it was acquired to house College programs in March 1991) in downtown Lewiston, located directly across Main St. from LCSC's Clearwater Hall residence facility (construction of the residence facility was completed in August 2006). Access to the offices and exhibits on the upper (second) floor of the CAH is provided by a single elevator. The elevator was "red tagged" by safety inspectors in December 2008, and it was determined that repairs to the aged mechanical system were not economically feasible—the elevator cab and supporting machinery require replacement. CAH operations were temporarily suspended after a fire occurred in the facility in March 2009. The repairs and necessary code upgrades to the fire-damaged portions of the building were completed in October of 2010. Insurance did not cover replacement of the elevator, because it was non-functional at the time of the fire. City of Lewiston inspectors have authorized use of upstairs offices in the CAH, but the upstairs exhibit galleries cannot be opened to regular public access until the elevator is back in operation.

LCSC is proceeding with plans to install an ADA-compliant elevator in the existing shaft of the CAH building. The architect's estimate to carry out this alteration and repair project is just under \$140,000 (cost estimates and a preliminary schematic from the DPW's regional service provider are provided in Atch 1 and Atch 2).

The scope of this maintenance project is well below the threshold at which the Board Executive Director's approval would be required. However, acceptance of

BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

the City's grant/loan is contingent upon State Board approval of LCSC taking on \$50,000 of indebtedness. Use of the City's dollars makes economic sense for the College—each year's principal and interest will be forgiven as long as LCSC continues to operate the facility. In the unlikely event that the College determines at some future point that it wishes to shut down operations of the Center before ten years had elapsed, the College would be able to pay any remaining principal and interest from its working capital, having taken advantage of "free financing" via the grant/loan arrangement.

IMPACT

Approval of the \$50,000 loan from the City of Lewiston will enable LCSC to leverage its institutional dollars and carry out a much-needed facilities project. This proposal would match each dollar spent by LCSC with two dollars from the City of Lewiston and the LCSC Foundation. The project will support the College's efforts to strengthen "town-gown" relationship with the City and with local citizens as part of downtown revitalization efforts, and cooperation already has led to City financial support for other LCSC alteration and repair efforts in our downtown facilities. A Board decision not to take advantage of the City grant/loan would result in the College having to use an additional \$50,000 of institutional funds (or additional external fundraising) to execute this high priority A & R project.

ATTACHMENTS

Attachment 1 – CAH Elevator Schematic	Page 5
Attachment 2 – CAH Elevator Cost Estimate	Page 7
Attachment 3 – CAH Elevator Loan Agreement	Page 9
Attachment 4 – Board Authorizing Resolution	Page 19

STAFF COMMENTS AND RECOMMENDATIONS

This request by LCSC would enable institutional funds to be leveraged 2:1 to complete a needed renovation project. The only reason this project is being brought for Board approval is because a 10 year \$50,000 forgivable loan from the City of Lewiston is one of the leveraging components. For each year of compliance with the terms of the loan, 1/10 of the principal and any accrued interest thereon are forgiven.

Staff did not identify any concerns with this request and recommends approval.

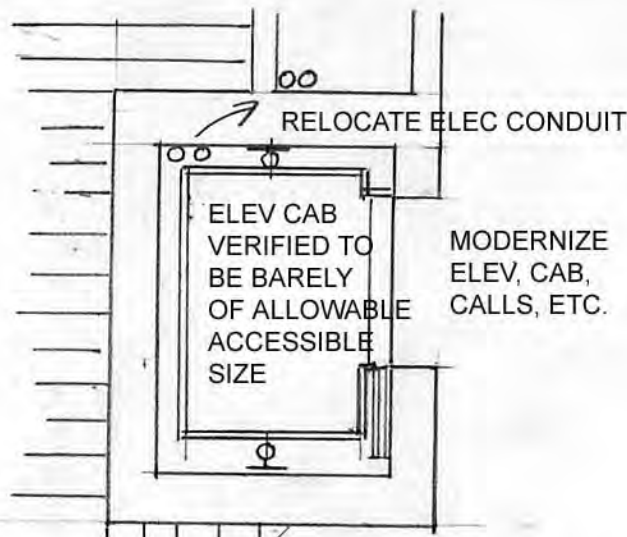
BUSINESS AFFAIRS AND HUMAN RESOURCES
APRIL 20-21, 2011

BOARD ACTION

I move that the elevator replacement project for the LCSC Center for Arts and History is economically feasible and necessary for the proper operation of the College; to approve the attached Loan Agreement with the City of Lewiston for funds to complete the project and the attached authorizing resolution to accept the proposed indebtedness; and to authorize the College's Vice-President for Finance and Administration to sign any necessary documents on behalf of the Board of Trustees.

Motion by _____ Seconded by _____ Carried Yes ___ No ___

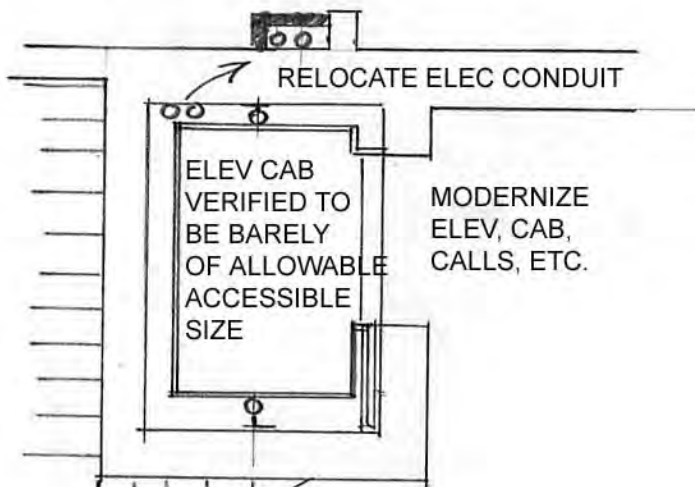
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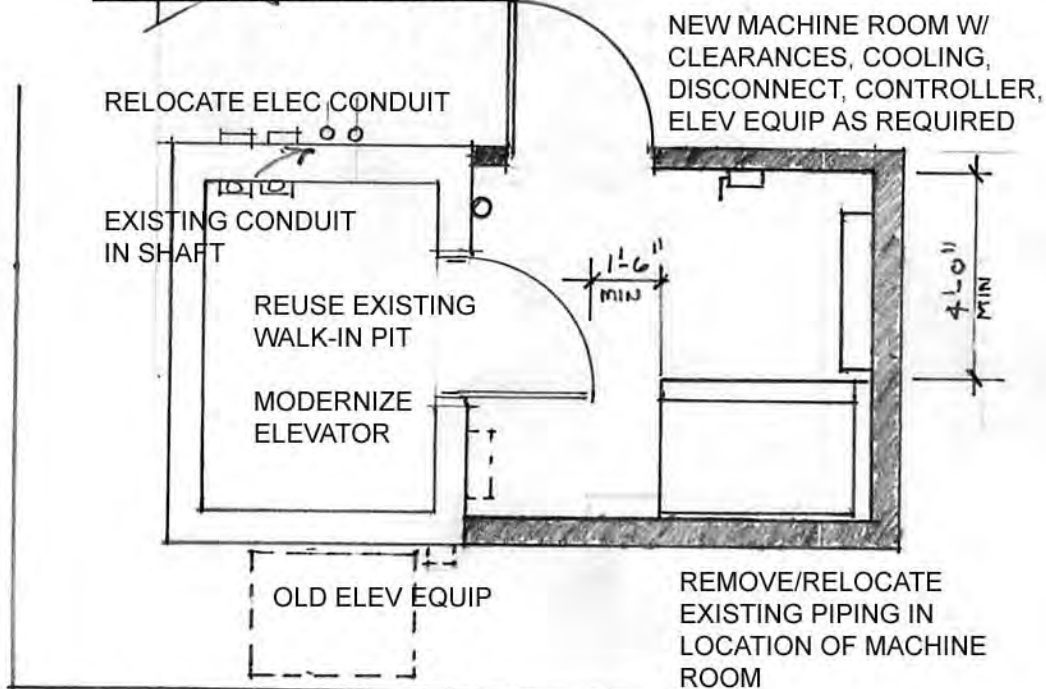
2ND FLOOR ELEVATOR

**LEWIS-CLARK CENTER FOR
ARTS & HISTORY ELEVATOR**

3/5/10



1ST FLOOR ELEVATOR



BSMT LEVEL ELEVATOR

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ATTACHMENT 2**OPINION OF PROBABLE CONSTRUCTION COST****Lewis-Clark Center for Arts & History Elevator****CKA Castellaw Kom Architects**

850 Main Street

Lewiston, Idaho

Architect's Project No.: 08033

Lewiston, Idaho

3/5/10

Project Phase: Schematic Design

Div./Sec.	Description	Units	Quantity	Unit Cost	Cost
General					
Div. 1	Mobilization	Lump Sum	Project	0.75%	\$834.04
	Bonds/Insurance/Fees/Permits	Lump Sum	Project	3.00%	\$3,336.15
	General Conditions	Lump Sum	Project	8.00%	\$8,896.40
Sub Total					\$13,066.58

Demolition

Sec. 2000	Asbestos Abatement - If Required	Allowance	Project	1.50%	\$1,668.07
	Lead Based Paint - Abatement / Mitigation	Allowance	Project	1.50%	\$1,668.07
	Shaft Removal/Environmental Issues	By Owner	TBD		
	Occupant Separation Barriers	Floor	0	450	\$0.00
	Demolish Piping/Mech at Machine Rm	Lump Sum	1	1500	\$1,500.00
	Dispose of Unsuitable Debris	CY	7	90	\$630.00
	Saw Cut/Remove Jambs/Sills	EA	0	1000	\$0.00
Sub Total					\$5,466.15

Site Work

Sec. 2200	Not Applicable				\$0.00
Sub Total					\$0.00

Building & Elevator

Sec. 3300	Replace Removed Jamb/Sills	EA	0	1000	0
	Conc. Patch / Repair / Misc.	SF	240	5	1200
Sec. 5120	Struct Stl Rail Bracket Support	EA	0	1250	\$0.00
	Struct Stl Blocking at Rear Entrance	EA	0	500	\$0.00
	New Hoist Beam at Top of Shaft	EA	0	800	\$0.00
Sec. 6100	Frame New Machine Rm Walls	LF	25	22.5	\$562.50
	Modify Machine Rm Ceiling to 7 ft.	EA	1	850	\$850.00
Sec. 7900	Firestopping/Sealants	Allowance	Project	500	\$500.00
Sec. 8100	Pair Smoke Drs/Frames/Hrdwr w/ Framing	EA Pair	0	5000	\$0.00
	Rated Machine Rm Dr/Frame/Hrdwr	EA	1	2000	\$2,000.00
	Rated Ceiling Panels (Piping Access)	Allowance	1	250	\$250.00
Sec. 9260	Rated GWB Machine Room Ceiling	EA	1	1000	\$1,000.00
	Patch & Repair CMU/GWB Holes in Walls	Allowance	1	550	\$550.00
Sec. 9600	Elev Cab Flooring/Base (to remain)	Allowance	0	500	\$0.00
Sec. 9900	Misc. Painting	Allowance	1	1250	\$1,250.00

ATTACHMENT 2

Sec. 10425	Interior Room Signage	FLR	3	125	\$375.00
Sec. 14245	Hyd Elev-2 Stop Modernization Allowance	EA	1	60,000	\$60,000.00
	Unkown Hoistway Issues Not Identified	TBD			

Sub Total	\$68,537.50				
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Mechanical

Sec. 15000	Sump Pump	Allowance	0	850	\$0.00
	Oil Separator	Allowance	0	1800	\$0.00
	Relocated plumbing piping - 2" drain line	LF	80	25	\$2,000.00
	Elev Equipment Rm Cooling	Allowance	1	5500	\$5,500.00
	Fire Sprinkler Mods	Allowance	1	1500	\$1,500.00

Sub Total	\$9,000.00				
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Electrical

Sec. 16000	Disconnect Upgrades	EA	2	2500	\$5,000.00
	Elevator Pit Electrical Upgrades	Allowance	1	2200	\$2,200.00
	Reroute Electrical Service Conduit	Allowance	1	5000	\$5,000.00
	Fire Alarm Smoke Detectors	Allowance Flr	3	1000	\$3,000.00

Sub Total	\$15,200.00				
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Construction Sub Total	\$111,270.23				
Idaho Sales Tax (6% of Material Only)					\$3,338.11
Design Contingency @ 10%					\$11,460.83
Opinion of Probable Construction Cost-Base Project					\$126,069.17

Construction Budget	TBD				
Anticipated A/E Fees/Reimbursables					\$12,606.92

AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2011, by and between the CITY OF LEWISTON, an Idaho municipal corporation, hereinafter referred to as “City” and LEWIS-CLARK STATE COLLEGE, an Idaho non-profit educational corporation, hereafter “LCSC”.

WITNESSETH:

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ONE: Upon the execution of this agreement the City shall provide to LCSC a loan in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00) from Community Development Block Grant funds for the construction and installation of an elevator at 415 Main Street (aka 411 Main Street), Lewiston, Idaho, to provide handicap access to the public using the building.

TWO: Said loan shall bear interest at the rate of THREE PER CENT (3%) per annum and shall be payable upon transfer of the real property encumbered or upon default of the terms of the agreement, provided hereafter. For each year of compliance with the terms hereof, one-tenth (1/10) of the principal of the original loan amount of \$50,000, and any accrued interest thereon, shall be forgiven.

THREE: In consideration of the loan herein provided, LCSC agrees to keep the building open, programmed, and contributing to the vitality of downtown by maintaining staff offices, a public gallery, and conducting other functions in the building located at 415 Main Street, Lewiston, Idaho, for a period of ten (10) years.

FOUR: LCSC shall provide annual proof of fire insurance and state license for the elevator to the City’s Community Development Department. The first report shall be due to the

City twelve (12) months after the issuance of the Certificate of Occupancy for the elevator at 415 Main Street, Lewiston, Idaho.

FIVE: The following actions or omissions by LCSC shall constitute a material breach and default of this agreement:

- a. Failure to complete construction of the elevator at 415 Main Street, Lewiston, Idaho, within twelve months after the execution of this agreement.
- b. Failure to timely file annual proof of life insurance and state licensure.
- c. Failure to keep the building occupied and in use for a period of ten (10) years.
- d. Abandonment of the premises at 415 Main Street, Lewiston, Idaho.

If default be made in the performance of this agreement, and if said default is not cured within thirty (30) days after written notice from the City of said default, then any and all outstanding principal balance and all accrued interest shall be due and payable to the City.

SIX: All notices required hereunder shall be addressed as follows:

City of Lewiston
Community Development Department
P.O. Box 617
Lewiston, Idaho 83501

President
Lewis-Clark State College
500 8th Avenue
Lewiston, Idaho 83501

SEVEN: LCSC shall at all times during the term of this agreement carry fire and other casualty property damage and liability insurance on the premises herein encumbered with an insurance company authorized to do business in the State of Idaho. The amount of the insurance shall be the fair market value of the improvement located at 415 Main Street, Lewiston, Idaho. The certificate of such insurance shall be filed with the City's Community Development Department.

EIGHT: In the contracting of work for which this loan is to be paid, the Owner agrees to the following:

A. Fair Housing and Equal Employment Opportunity

(1) The contractor employed will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, marital status, physical or mental disability, or political beliefs or affiliations. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor employed agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the City of Lewiston setting forth the provisions of this nondiscrimination clause.

(2) The contractor employed will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or ancestry, age, marital status, physical or mental disability, or political beliefs or affiliations.

(3) The contractor employed will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

B. Regulations pursuant to “Anti-Kickback Act”

The contractor employed shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the “Anti-Kickback Act” of

June 13, 1934 (48 Stat. 948:62 Stat 862; title 18 U.S.C., Section 874: and title 40 U.S.C. section 276(c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of statements required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

C. Section 3, Compliance in the Provision of Training Employment and Business Opportunities

(1) The work to be performed on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project to be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(2) The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

(3) The contractor employed will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or

understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(4) The contractor employed will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 570.607. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 570.607 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(5) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 570.607 and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successor, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractor, or subcontractors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as specified in 24 CFR 570.607.

D. Compliance with Environmental Regulations

This contract is subject to compliance by the contractor with the Clean Water Act, as amended, 42 U.S.C. 1857 et seq, the Federal Water Control Act, as amended, 33 U.S.C. 1251

et seq, and the Regulations of the Environmental Protection Agency with respect thereof, at 40 CFR part 15, as amended from time to time; and other environmental regulation and requirements as directed.

The contractor and all subcontractors working there under shall not utilize in the performance of work under this contract any facility listed on the list of violating facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20. The contractor and all subcontractors working thereunder shall give the municipality prompt notice of any notifications received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized under the terms and conditions of said contract is under consideration to be listed on the EPA list of violating facilities.

This project is also subject to the environmental requirements found in 24 CFR 570.604.

The contractor agrees that the requirements set forth in this paragraph will be included in every subcontract awarded under this contract and will take necessary action as directed by EPA to enforce the provisions set forth above.

E. Interest of Certain Federal and Other Officials

Subject to the requirements of 24 CFR 570.611 no member of or delegate to the Congress of the United States and no resident commissioner shall be admitted to any share or part of this contract or to any benefit arising from the same, provided, that the foregoing provision of this section shall not be construed to extend to this contract is made with a corporation for its general benefit.

F. Use of Debarred, Suspended or Ineligible Contractors

Use of debarred, suspended or ineligible contractors is prohibited pursuant to 24 CFR 570.609 and 24 CFR Part 5.

G. National Flood Insurance Program

The property owner, as a recipient of funds under the CDBG program, shall provide evidence of flood insurance coverage as provided for in 24 CFR 570.605 for the real property described in this agreement.

H. Architectural Barriers Act and the Americans with Disabilities Act

This project is subject to the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and the Americans with Disabilities Act (42 USC 12131; 47 USC 155,201,218 and 225).

NINE: The City, its officers, representatives, agents and employees and those employees of the Department of Housing and Urban Development and Inspector General shall have full and complete access to the property at all times during the term of this agreement. If any of the specifications, plans, instructions, or any other laws, ordinances, rehabilitation objectives, require any work to be specifically inspected, tested, or approved, the contractor shall give the City timely notice, in no case less than ten (10) days, of its readiness for inspection.

TEN: The Owner agrees to and shall hold the City free from and harmless of any and all causes of action and liability of any kind which may be incurred by the City either indirectly as a result of their agreement of any actions of the Owner, his agents, employees, heirs, or assigns as a result of this agreement.

ELEVEN: Should any suit or action be brought to enforce the terms of this agreement the prevailing party is hereby entitled to recover a reasonable attorney's fee and costs against the other party.

TWELVE: This agreement shall extend to and bind the successors, assigns and heirs of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by its duly authorized representatives the day and year first above written.

CITY OF LEWISTON

Laura Von Tersch,
Community Development Director

ATTEST: _____
Kari Ravencroft, City Clerk

STATE OF IDAHO, BY AND THROUGH
THE STATE BOARD OF EDUCATION
AS BOARD OF TRUSTEES FOR
LEWIS-CLARK STATE COLLEGE

Chet Herbst
Vice-Pres for Finance & Administration

STATE OF IDAHO)
 : ss
Nez Perce County)

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared LAURA VON TERSCH and KARI RAVENCROFT, known to me to be the Community Development Director and City Clerk of the City of Lewiston, an Idaho municipal corporation, whose names are subscribed to the within instrument and acknowledged to me that they executed the same on behalf of said municipality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for the State of Idaho
Residing at Lewiston
Commission expires: _____

STATE OF IDAHO)
 : ss
Nez Perce County)

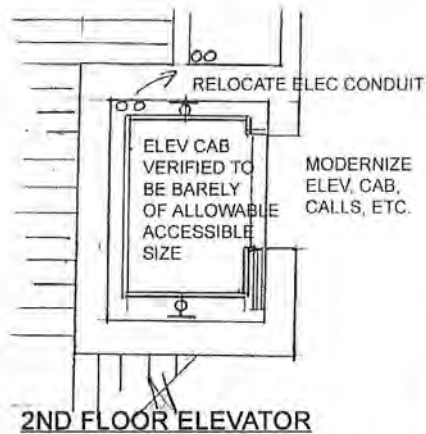
On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared _____, known to me to be the President of Lewis-Clark State College, an Idaho non-profit educational corporation, whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for the State of Idaho
Residing at Lewiston
Commission expires: _____

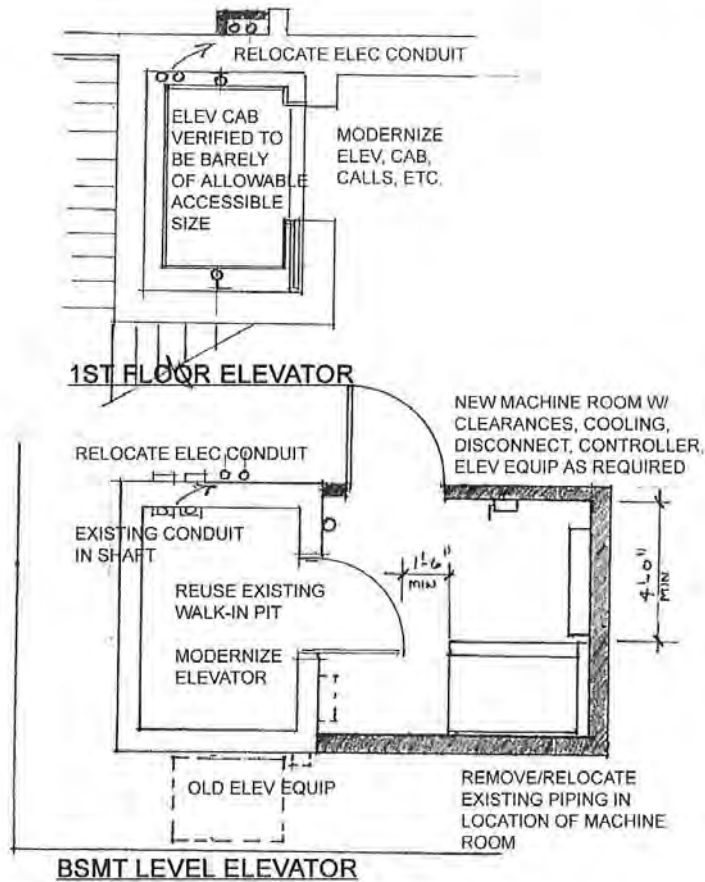
SCOPE OF WORK

- Install an ADA accessible passenger elevator
- Secure State license for elevator



LEWIS-CLARK CENTER FOR
ARTS & HISTORY ELEVATOR

3/5/10



AUTHORIZING RESOLUTION

A RESOLUTION OF THE STATE BOARD OF EDUCATION ACTING AS THE BOARD OF TRUSTEES OF LEWIS-CLARK STATE COLLEGE, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE CITY OF LEWISTON, IDAHO AND RELATED DOCUMENTS WITH RESPECT TO THE FINANCING OF THE REPLACEMENT OF THE ELEVATOR SYSTEM FOR THE LEWIS-CLARK STATE COLLEGE CENTER FOR ARTS AND HISTORY; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, THE STATE BOARD EDUCATION ACTING AS BOARD OF TRUSTEES OF LEWIS-CLARK STATE COLLEGE (the “College”), a body politic and corporate and institution of higher education duly organized, existing and authorized by the Constitution and laws of the State of Idaho, to borrow money to finance the replacement of the elevator system providing access to the Center for Arts and History and the programs provided therein (the “Project”); and

WHEREAS, the College desires to finance the Project, in part, through a Loan Agreement (the “Agreement”) in the amount of \$50,000 and at a projected rate of interest described in the Agreement with the City of Lewiston (the “City”), evidencing a loan (the “Loan”) for the Project;

WHEREAS, in order to finance the Project, the College proposes to enter into the Loan Agreement, the form of which has been presented to the Board of Trustees at this meeting; and

WHEREAS, the Board of Trustees of the College deems it for the benefit of the College and for the efficient and effective administration thereof to enter into the Agreement on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE BOARD OF TRUSTEES OF LEWIS-CLARK STATE COLLEGE as follows:

Section 1. Approval of Documents.

The form, terms and provisions of the Loan Agreement are hereby approved in substantially the forms presented at this meeting; and the Bursar of the College is hereby authorized and directed to execute the Agreement and to deliver the Loan Documents to the respective parties thereto.

Section 2. Other Actions Authorized.

The officers and employees of the College shall take all action necessary or reasonably

required by the parties to the Agreement and all related documents to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 3. Severability.

If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 4. Repealer.

All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 5. Effective Date.

This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the BOARD OF TRUSTEES LEWIS-CLARK STATE COLLEGE this ____th day of April, 2011.

THE BOARD OF TRUSTEES OF LEWIS-CLARK STATE COLLEGE

By: _____
Printed Name: _____
Title: President, State Board of Education and
Board of Trustees of Lewis-Clark State
College

By: _____
Name: _____
Title: Bursar

ATTEST:

By: _____
Printed Name: _____
Title: Secretary of the Board

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